VOL. 58 – NO 29 FRIDAY, JULY 22, 2011

District of Columbia REGISTER

HIGHLIGHTS

- Office of the State Superintendent of Education Establishes Eligibility Standards for Interscholastic Athletics in District of Columbia Public Schools
- Public Service Commission Sets Electricity Quality of Service Standards
- Taxicab Commission Proposes Updates to the Rules Governing the Taxicab Commission Fund Assessments
- Department of Housing and Community Development Announces Funding Availability for the Community Development Block Grant Program

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

The District of Columbia Office of Documents and Administrative Issuances (ODAI) publishes the *District of Columbia Register* (ISSN 0419-439X) (*D.C. Register*) every Friday under the authority of the *District of Columbia Documents Act,* D.C. Law 2-153, effective March 6, 1979 (25 DCR 6960). The policies which govern the publication of the *D.C. Register* are set forth in Title 1 of the District of Columbia Municipal Regulations, Chapter 3 (Rules of the Office of Documents and Administrative Issuances.) Copies of the Rules may be obtained from the Office of Documents and Administrative Issuances. Rulemaking documents are also subject to the requirements of the *District of Columbia Administrative Procedure Act,* District of Columbia Official Code, §§2-50l *et seq.*, as amended.

All documents published in the *D.C. Register* must be submitted in accordance with the applicable provisions of the Rules of the Office of Documents and Administrative Issuances. Documents which are published in the *D.C. Register* include (1)) Acts and resolutions of the Council of the District of Columbia; (2) Notices of proposed Council legislation, Council hearings, and other Council actions; (3) Notices of public hearings; (4) Notices of final, proposed, and emergency rulemaking; (5) Mayor's Orders and information on changes in the structure of the District of Columbia government (6) Notices, Opinions, and Orders of District of Columbia Boards, Commissions and Agencies; (7) Documents having general applicability and notices and information of general public interest.

Deadlines for Submission of Documents for Publication

ODAI accepts electronic documents for publication using a Web-based portal at www.dcregs.dc.gov. To submit a document, obtain a username and password from your department's ODAI liaison. If you do not know your liaison, email ODAI at dcdocuments@dc.gov to request for your department's ODAI liaison. For guidelines on how to format and submit documents for publication, email ODAI at dcdocuments@dc.gov.

The deadline for receiving documents from the District of Columbia Agencies, Boards, Commissions, and Public Charter schools is TUESDAY, NOON of the week of publication. The deadline for receiving documents from the District of Columbia Council is WEDNESDAY, NOON of the week of publication. If an official District government holiday falls on Monday or Friday, the deadline for receiving documents remains the same as outlined above. If an official District government holiday falls on Tuesday, Wednesday or Thursday, the deadline for receiving documents is one day earlier from the deadlines outlined above.

Viewing the DC Register

ODAI publishes the *D.C. Register* ONLINE every Friday at www.dcregs.dc.gov. Copies of the *D.C. Register* are also available for public review at each branch of the District of Columbia Public Library and in each Advisory Neighborhood Commission office. There are no restrictions on the republication of any portion of the *D.C. Register*. News services are encouraged to publish all or part of the *D.C. Register*.

Legal Effect of Publication - Certification

Except in the case of emergency rules, no rule or document of general applicability and legal effect shall become effective until it is published in the *D.C. Register*. Publication creates a rebuttable legal presumption that a document has been duly issued, prescribed, adopted, or enacted and that the document complies with the requirements of the *District of Columbia Documents Act* and the *District of Columbia Administrative Procedure Act.* The Administrator of the Office of Documents hereby certifies that this issue of the *D.C. Register* contains all documents required to be published under the provisions of the *District of Columbia Documents Act.*

DISTRICT OF COLUMBIA
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

441 4th STREET - SUITE 520 SOUTH - ONE JUDICIARY SQ. - WASHINGTON, D.C. 20001 - (202) 727-5090

VINCENT C. GRAY
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

PERIODICAL POSTAGE PAID AT WASHINGTON, D.C.
POSTMASTER: Send address changes to D.C. Register, 441 - 4th Street, N.W., Suite 520 South, Washington, D.C. 20001

CONTENTS

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA

BILLS INTRODUCED AND PROPOSED RESOLUTIONS

Notice of Intent to Act on New Legislation –
Bills 19-387, 19-389, 19-396, 19-397, 19-401 and
19-423 thru 19-428 and Proposed Resolution 19-347 ..... 005999 - 006001

OTHER COUNCIL ACTIONS

Notice of Reprogramming Requests –

Reprog 19-53 Request to reprogram $2,500,000 of Fiscal Year 2011 Dedicated Taxes budget authority from the TIF and PILOT Transfer agency to the Office of the Deputy Mayor for Planning and Economic Development ..... 006002 - 006004

Reprog 19-54 Request to reprogram $549,461 in capital funds budget authority and allotment within the Department of Health (DOH) ..... 006002 - 006004

Reprog 19-55 Request to reprogram $3,500,000 of Fiscal year 2011 Local funds budget authority within the Department of Employment Services (DOES) ..... 006002 - 006004

Reprog 19-56 Request to reprogram $7,250,000 of capital budget authority and allotment from the Deputy Mayor for Planning and Economic Development (DMPED), the Department of Parks and Recreation (DPR), Fire and Emergency Medical Services (FEMS), and Washington Metropolitan Area Transit Authority (WMATA) projects to the Office of Public Education Facilities Modernization (OPEFM) ..... 006002 - 006004

Reprog 19-57 FY 2011 movement of $57,783,526 of Fiscal Year 2011 Local funds budget authority within the Department of Health Care Finance (DHCF) ..... 006002 - 006004

Reprog 19-58 Request to reprogram $1,000,000 in Local funds budget authority within the District of Columbia Fire and Emergency Medical Services Department (FEMS) ..... 006002 - 006004

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA CONT'D

OTHER COUNCIL ACTIONS CONT'D

Notice of Reprogramming Requests – cont'd

Reprog 19-59 Request to reprogram $2,182,669 of Fiscal Year 2011 Special Purpose Revenue budget authority from the Office of Victim Services (OVS) to the District Department of Transportation (DDOT) ..... 006002 - 006004

Reprog 19-60 Request to reprogram $15,200,000 of capital budget authority and allotment from Mass Transit Subsidies and within the District Department of Transportation ..... 006002 - 006004

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES

PUBLIC HEARINGS

Alcoholic Beverage Regulation Administration –

ABC Board – July 27, 2011 Hearings 006005

Boxcar - ANC 6B 006006

Jin - ANC 1B – Substantial Change 006007

Slaviya - ANC 1C – Correction 006008

The Local Vine Cellar Market & Tasting Room - ANC 2C 006009

Environment, District Department of the - Proposed Rulemaking to Regulate the Interstate Transport of Nitrogen Oxide Emissions from Non-Electric Generating Unit Sources and Proposed Revision of the District's State Implementation Plan 006010

Zoning Commission – Cases

05-28F Lano Parcel 12 LLC ..... 006011 - 006012

11-16 Office of Planning – Text Amendment to § 721.3 ..... 006013 - 006014

FINAL RULEMAKING

Education, Office of the State Superintendent of – Amend 5A DCMR (Education), Ch. 27 (Interscholastic Athletics) to establish uniform eligibility and safety standards for interscholastic athletics in District of Columbia public schools ..... 006015 - 006025

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

FINAL RULEMAKING CONT'D

Public Service Commission – Formal Cases 766, 982, 991 and 1002
Amend 15 DCMR (Public Utilities & Cable Television),
Ch. 36 (Electricity Quality of Service Standards), Section 3603,
"Reliability Standards," by deleting subsections 3603.10 through
3603.17 in their entirety and replacing them with new text ..... 006026 – 006028

PROPOSED RULEMAKING

Environment, District Department of the – Amend 20 DCMR
(Environment) to repeal Ch. 10 (Nitrogen Oxides Emissions
Budget Program) and replace it with Ch. 10 (Non-EGU
Limits On Nitrogen Oxide Emissions) to formulate regulations
for interstate transport of nitrogen oxide (NO_x) emissions from
non-electric generating unit (EGU) sources .....006029 - 006034

Environment, District Department of the – Amend 20 DCMR
(Environment) to repeal Ch. 8 (Asbestos, Sulfur , Nitrogen
Oxides and Lead), Sec. 806 and add new Ch. 33 (Regulation
of Lead-Based Paint Activities) .....006035 – 006081

Taxicab Commission – Amend 31 DCMR (Taxicabs and Public
Vehicles for Hire), Ch. 10 (Public Vehicles for Hire) to update
Rules governing the application process for a public vehicle
for hire Operator license .....006082 - 006096

Taxicab Commission – Amend 31 DCMR (Taxicabs and Public
Vehicles for Hire), Ch. 11 (Taxicab Commission Fund
Assessments) to update Rules governing assessments .....006097 - 006098

Zoning Commission – Case No. 11-05
(Text Amendment to § 1805 to Permit General
Office Use on the Second Floor of Building 173
in the Southeast Federal Center on an Interim Basis).....006099

EMERGENCY AND PROPOSED RULEMAKING

Contracting and Procurement, Office of - Amend 27 DCMR
(Contracts and Procurement) by adding Ch. 14 (Use of Electronic
Commerce) to establish regulations for the use of electronic
transactions in the District's contracting and procurement process.....006101 - 006101

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

EMERGENCY AND PROPOSED RULEMAKING CONT'D

Contracting and Procurement, Office of - Amend 27 DCMR (Contracts and Procurement), Ch. 22 (Debarment Proceedings for Unsatisfactory Performance), by adding a new Sec. 2219 to establish procedures for debarring a contractor from applying for or working on any District contracts . ..... 006102 - 006104

Contracting and Procurement, Office of – Amend 27 DCMR (Contracts and Procurement), Ch. 32 (Contract Financing and Funding), Sect. 3205 9 (Advance Payments) to authorize advance payments to the Washington Metropolitan Area Transit Authority (WMATA) for services provided to the District of Columbia..... 006105 - 006106

Zoning Commission – Case No. 11-16 – Amend 11 DCMR (Zoning), Ch. 7 (Commercial Districts), Sec. 721 (Uses as a Matter of Right (C-2)) to permit a firearm retail sales establishment to use a District law enforcement agency located within 300 feet of a Residence (R) or Special Purpose (SP) Zone District; or a church or other place of worship, public or private school, a public library, or a playground ..... 006107 - 006110

NOTICES, OPINIONS, AND ORDERS
MAYOR'S ORDERS

2011-118 Delegation of Rulemaking Authority to the Director of the Department of Human Services 006111

2011-119 Delegation of Rulemaking Authority for DC One Card Fees 006112

BOARDS, COMMISSIONS, AND AGENCIES

Alcoholic Beverage Regulation Administration –
ABC Board – Investigative Meeting Agenda – July 27, 2011..... 006113 - 006114
ABC Board – License Cancellation Meeting - July 27, 2011..... 006115 - 006117
ABC Board – Meeting Agenda – July 27, 2011 ..... 006118 -006121

Elections and Ethics, Board of -
Certification of ANC/SMD vacancy for 6C04 006122
Delegation of Authority to Executive Director and General Counsel ..... 006123 - 006124

Elsie Whitlow Stokes Public Charter School - Request for Proposals
Audit and Tax Services,
Assessment Materials and Technological Service,
Public Relations and Marketing, and
Afterschool Coordination Services 006125

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

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

Environment, District Dept. of the– Intent to Issue Permit
Palace Laundry dba Linens of the Week, 713 Lamont Street NW 006126

Housing and Community Development, Dept. of – Funding Availability
Community Development Block Grant Program (CDBG) 006127
Department of Mental Health (DMH) Grant 006128

Housing Finance Agency - Board of Directors Meeting - July 26, 2011 006129

Howard Road Academy - Request for Proposals
SPED Services & Legal Counsel, Modular Space, Fruit Delivery 006130

Inspired Teaching Demonstration Public Charter School, The -
Request for Proposals - Food Services 006131

Mundo Verde Public Charter School – Request for Proposals
Student Meal Services 006132

Potomac Lighthouse Public Charter School DC, The - Request for Proposals
Delivery of breakfast, lunch, snacks for the 2011-2012 school year 006133

Public Service Commission – Public Notice
FC 1087 – Application of Pepco to Increase Existing Distribution
Service Rates ..... 006134 - 006138

Secretary, Office of -
Appointment of Notaries Public - Effective August 15, 2011 ..... 006139 – 006143

University of the District of Columbia -
Board of Trustees Facilities Committee Meeting 006144
Board of Trustees Special Meeting 006145

Washington Latin Public Charter School – Request for Proposals
Project Management 006146

Water and Sewer Authority, D.C. -
Audit Committee Meeting - July 28, 2011 006147
Finance and Budget Committee Meeting - July 28, 2011 006148
Retail Water and Sewer Rates Committee Meeting - July 26, 2011 006149

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

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

Zoning Adjustment, Board of - Notice of Closed Meeting -
July 26, 2011 006150

Zoning Adjustment, Board of - Orders

17109-C	Kalorama Citizens Association - ANC 1C	006151 - 006158
17509-B	Bernard L. Renard, Motion for a Two-Year Extension of BZA Order No. 17509, pursuant to 11 DCMR § 3130 – Order	006159 – 006163
17600-B / 17606-C	Dakota Square LLC, Motion of Fort Totten North, & Dakota Points LLC of Fort Totten South - Order	006164 - 006169
18230	1813-1815 M Street, LLC - ANC 2B	006170 - 006171
18251	MM Washington Redevelopment Partners LLC - ANC 5C	006172 - 006174
18253	Thomas Eichenberger & Marian Wiseman -ANC 6A	006175 - 006177
18255	Corrine Guttman - ANC 3F	006178 - 006180

Zoning Commission – Orders

06-11A/ 06-12A	The George Washington University Foggy Bottom Campus – Square 103 - Order	006181 - 006199
06-14B	MidAtlantic Realty Partners, LLC - Order	006200 - 006212
06-14C	MidAtlantic Realty Partners, LLC – Order	006213 - 006217
06-29B	Washington Value Added I, LLC - Order	006218 - 006221
06-40A	Gateway Market Center, Inc. - Order	006222 - 006225

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

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

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

COUNCIL OF THE DISTRICT OF COLUMBIA PROPOSED LEGISLATION

BILLS

B19-387 Building 18 Procurement Authority Act of 2011

Intro. 7-8-11 by Chairman K. Brown at the request of the Mayor and referred to the Committee on Government Operations with comments from the Committee on the Judiciary

---

B19-389 District of Columbia Retirement Board Procurement Exemption Amendment Act of 2011

Intro. 7-11-11 by Councilmember Cheh and Chairman K. Brown and referred to the Committee on Government Operations

---

B19-396 Oak Hill Conservation Easement Act of 2011

Intro. 7-11-11 by Chairman K. Brown at the request of the Mayor and referred to the Committee on Government Operations

---

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

BILLS cont'd

B19-397 Technical Amendments Act of 2011

Intro. 7-11-11 by Chairman K. Brown and retained by the Council

---

B19-401 Prevention of Child Abuse and Neglect Amendment Act of 2011

Intro. 7-8-11 by Chairman K. Brown at the request of the Mayor and referred to the Committee on Human Services

---

B19-423 Moratorium on the Construction of Apartment Buildings in Ward 8 Act of 2011

Intro. 7-12-11 by Councilmember Barry and referred to the Committee on Housing and Workforce Development with comments from the Committee of the Whole

---

B19-424 District Domicile Requirement Amendment Act of 2011

Intro. 7-12-11 by Councilmembers Alexander, Barry, M. Brown and Thomas, Jr. and referred to the Committee on Government Operations

---

B19-425 Closing of a Public Alley in Square 394 Act of 2011

Intro. 7-12-11 by Councilmember Graham and referred to the Committee of the Whole

---

B19-426 UUV Amendment Act of 2011

Intro. 7-12-11 by Councilmember Mendelson and Chairman K. Brown and referred to the Committee on the Judiciary

---

B19-427 Criminal Justice Penalties Amendment Act of 2011

Intro. 7-12-11 by Councilmember Mendelson and referred to the Committee on the Judiciary

---

B19-428 DOC Inmate Processing and Release Amendment Act of 2011

Intro. 7-12-11 by Councilmember Mendelson and referred to the Committee on the Judiciary

---

COUNCIL OF THE DISTRICT OF COLUMBIA PROPOSED LEGISLATION

PROPOSED RESOLUTION

PR19-347 Board of Directors of the Washington Metropolitan Area Transit Authority Muriel Bowser Appointment Resolution of 2011

Intro. 7-13-11 by Chairman K. Brown and retained by the Council

---

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Requests

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

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

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

Reprog. 19-53: Request to reprogram $2,500,000 of Fiscal Year 2011 Dedicated Taxes budget authority from the TIF and PILOT Transfer agency to the Office of the Deputy Mayor for Planning and Economic Development (DMPED) was filed in the Office of the Secretary on July 18, 2011. This reprogramming ensures that DMPED will have the funds to establish the H Street Retail Priority Area Grant.

RECEIVED: 14 day review began July 19, 2011

Reprog. 19-54: Request to reprogram $549,461 in capital funds budget authority and allotment within the Department of Health (DOH) was filed in the Office of the Secretary on July 18, 2011. This reprogramming is necessary to ensure sufficient funds are available for capital improvements at the D.C. Animal Shelter.

RECEIVED: 14 day review began July 19, 2011

Reprog. 19-55: Request to reprogram $3,500,000 of Fiscal year 2011 Local funds budget authority within the Department of Employment Services (DOES) was filed in the Office of the Secretary on July 18, 2011. This reprogramming ensures that DOES would have sufficient budget authority for the personal services costs of staff and related program costs that are being realigned from the Worker's Compensation Administration Special Purposes Revenue source to the Local fund Transitional Employment Program (TEP) for the remainder of the fiscal year.

RECEIVED: 14 day review began July 19, 2011

Reprog. 19-56: Request to reprogram $7,250,000 of capital budget authority and allotment from the Deputy Mayor for Planning and Economic Development (DMPED), the Department of Parks and Recreation (DPR), Fire and Emergency Medical Services (FEMS), and Washington Metropolitan Area Transit Authority (WMATA) projects to the Office of Public Education Facilities Modernization (OPEFM) was filed in the Office of the Secretary on July 18, 2011. This reprogramming is needed to address small capital issues at 10 DCPS school facilities over the summer break.

RECEIVED: 14 day review began July 19, 2011

Reprog. 19-57: FY 2011 movement of $57,783,526 of Fiscal Year 2011 Local funds budget authority within the Department of Health Care Finance (DHCF) was filed in the Office of the Secretary on July 18, 2011. This movement ensures that DHCF will be able to align the budget for Medicaid Provider Payments with actual expenditures.

RECEIVED: 14 day review began July 19, 2011

Reprog. 19-58: Request to reprogram $1,000,000 in Local funds budget authority within the District of Columbia Fire and Emergency Medical Services Department (FEMS) was filed in the Office of the Secretary on July 18, 2011. This reprogramming ensures that FEMS has sufficient funding to cover supplies and maintenance costs of operational equipment.

RECEIVED: 14 day review began July 19, 2011

Reprog. 19-59: Request to reprogram $2,182,669 of Fiscal Year 2011 Special Purpose Revenue budget authority from the Office of Victim Services (OVS) to the District Department of Transportation (DDOT) was filed in the Office of the Secretary on July 18, 2011. This reprogramming is needed for the Circulator Fund to match the revenue earned for the operation of the circulator bus service and for the Unified Fund to support the FY 2011 snow season efforts and operations.

RECEIVED: 14 day review began July 19, 2011

Reprog. 19-60: Request to reprogram $15,200,000 of capital budget authority and allotment from Mass Transit Subsidies and within the District Department of Transportation was filed in the Office of the Secretary on July 18, 2011. This reprogramming is needed to match 2005 federal earmark of $75 million and ensure that it remains available for project AW011A, South Capitol Street Bridge Replacement.

RECEIVED: 14 day review began July 19, 2011

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, JULY 27, 2011
2000 14TH STREET, N.W., SUITE 400S,
WASHINGTON, D.C. 20009

Nick Alberti, Interim Chairperson
Members:
Donald Brooks, Herman Jones, Calvin Nophlin, and Mike Silverstein

Fact Finding Hearing **9:30 AM**
Case# 11-251-00102, 11-251-00202, 11-251-00117:
Night and Day Management, LLC, t/a Fur Factory
33 Patterson Street NE**,** License #60626**,** Retailer CN
Physical Altercation, Assault With a Deadly Weapon & Intoxicated Patron

Fact Finding Hearing **9:45 AM**
Case #10-PRO-00180: Colin Unlimited, LLC, t/a Saki
2477 18th Street NW, License #ABRA-081909, Retailer CT
Substantial Change (Expansion of Premises)

Show Cause Hearing **10:00 AM**
Case# 11-CMP-00042: K & B Liquors, t/a Montana Liquors
1801 Montana Avenue NE, License #85906, Retailer A
Provided Go-Cups to Customers

Show Cause Hearing (Status) **11:00 AM**
Case# 11-251-00063: Food and Fun Network, LLC, t/a Slaviya
2424 18th Street NW, License #83910, Retailer CR
Failed to Follow Security Plan & Allowed the Establishment to Be Used For an Unlawful or Disorderly Purpose

BOARD RECESS

BOARD'S ADMINISTRATIVE AGENDA
1:00 PM

Protest Hearing **1:30 PM**
Case# 10-PRO-00178: Green Island Heaven and Hell, Inc., t/a Green Island Café/Heaven and Hell**,** 2327 18th Street NW**,** License #74503**,** Retailer CT
Termination of Voluntary Agreement

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: July 22, 2011
Petition Date: September 6, 2011
Hearing Date: September 19, 2011

License No.: ABRA-087549
Licensee: Eastern Market Entertainment, LLC
Trade Name: Boxcar
License Class: Retail Class "C" Restaurant
Address: 224 7th Street, SE
Contact: Paul L. Pascal, 202-544-2200

WARD 6 ANC 6B SMD 6B02

Notice is hereby given that this applicant has applied for a license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, NW, 4th Floor, Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date.

NATURE OF OPERATION
Classic American Bistro with recorded music. No Live Entertainment. Sidewalk Cafe with 12 seats. Seating capacity is 75. Total occupancy load is 99.

HOURS OF OPERATION FOR THE INSIDE PREMISE AND SIDEWALK CAFE
Sunday through Thursday 9 am – 2 am and Friday & Saturday 8 am – 3 am

HOURS OF SALES/SERVICE/CONSUMPTION OF ALCOHOLIC BEVERAGES FOR THE INSIDE PREMSIE AND SIDEWALK CAFE
Sunday 10 am – 2 am Monday through Thursday 9 am – 2 am and
Friday & Saturday 8 am – 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: July 22, 2011
Petition Date: September 6, 2011
Hearing Date: September 19, 2011

License No.: ABRA-023734
Licensee: Two Brothers & A Sister, Inc.
Trade Name: Jin
License Class: Retail Class "C" Tavern
Address: 2017 14th Street, NW
Contact: Terry Brennan 202-686-7600

WARD 1 ANC 1B SMD 1B02

Notice is hereby given that this licensee has applied for a substantial change to his 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 hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date.

Request a summer garden with up to 50 seats depending on final certificate of occupancy.

CURRENT HOURS OF OPERATION AND ALCOHOL SERVICE, SALES AND CONSUMPTION
Sunday through Thursday 11 am – 2 am and Friday & Saturday 11 am – 3 am

HOURS OF OPERATION FOR SUMMER GARDEN AND ALCOHOL SERVICE, SALES AND CONSUMPTION
Sunday through Thursday 11 am – 2 am and Friday & Saturday 11 am – 3 am

***CORRECTION**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: July 15, 2011
Petition Date: August 29, 2011
Hearing Date: September 12, 2011

License No.: ABRA-083910
Licensee: Food and Fun Network, LLC
Trade Name: Slaviya
License Class: Retail Class "C" Restaurant
Address: 2424 18th Street NW
Contact: Anton Nonchev 703-209-1146*

WARD 1 ANC 1C ANC 1C03

Notice is hereby given that this licensee has applied for a substantial change to his 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 hearing date at 10:00 am, 2000 14th Street, N.W., Suite 400 South Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date.

Licensee requests the following substantial change to its nature of operations:

The request is to amend the Entertainment Endorsement to include Dancing

HOURS OF OPERATION/SALES/SERVICE & CONSUMPTION
Sunday 10 am – 2 am Monday through Thursday 5 pm – 2 am Friday 5 pm -3 am* and Saturday 10 am - 3 am*

SIDEWALK CAFÉ HOURS OF OPERATION /SALES SERVICE & CONSUMPTION*
Saturday & Sunday 11 am – 12 am Monday – Friday 5 pm – 12 am

HOURS OF ENTERTAINMENT *
Sunday - Thursday 9 pm – 2 am Friday & Saturday 9 pm – 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: July 22, 2011
Petition Date: September 6, 2011
Hearing Date: September 19, 2011

License No.: ABRA-087410
Licensee: Think Wine & Spirits Group, LLC
Trade Name: The Local Vine Cellar Market & Tasting Room
License Class: Retail Class "A" Liquor Store
Address: 425 11th Street, NW
Contact: David D. Louden, 410-245-9566

WARD 2 ANC 2C SMD 2C03

Notice is hereby given that this applicant has applied for a license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, NW, 4th Floor, Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date.

NATURE OF OPERATION
Liquor Store with sampling area.

HOURS OF OPERATION
Sunday closed, Monday through Saturday 9 am – 12 am

HOURS OF SALE/SERVICE/CONSUMPTION OF ALCOHOLIC BEVERAGES
Sunday closed, Monday through Saturday 9 am – 12 am

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF PUBLIC HEARING ON AIR QUALITY ISSUES

Proposed Rulemaking to Regulate the Interstate Transport of Nitrogen Oxide Emissions from Non-Electric Generating Unit Sources and Proposed Revision of the District's State Implementation Plan

Notice is hereby given that a public hearing will be held on Monday, August 22, at 5:30 p.m. in Room 512 at 1200 First Street, N.E., 5th Floor, in Washington, D.C. This hearing provides interested parties an opportunity to comment on the District's proposed rulemaking and proposed State Implementation Plan (SIP) revision. Once finalized, the regulation will be submitted to the United States Environmental Protection Agency to revise the District's SIP in order to meet the requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act (42 U.S.C. § 7410(a)(2)(D)(i)(I) (2010)) in accordance with 40 CFR Part 51.

Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR), Subtitle A, Air Quality, Chapter 10 is being repealed in its entirety and replaced with a source category NO_x emissions cap. The repeal is necessary to remove outdated requirements for electric generating units (EGUs) that are currently controlled through Federal regulation. The proposed regulation is necessary to maintain emissions limits for one remaining facility that was covered under Chapter 10 but is not an EGU: the United States General Services Administration Central Heating and Refrigeration Plant.

The proposed regulation is available for public review during normal business hours at the offices of the District Department of the Environment (DDOE), 1200 First Street, NE, Washington, D.C. 20002, and on-line at http://ddoe.dc.gov/ddoe. Interested parties wishing to testify at this hearing must submit in writing their names, addresses, telephone numbers, and affiliation, if any, to Mr. William Bolden at DDOE by 4:00 p.m. on August 22, 2011. Interested parties may also submit written comments to Ms. Cecily Beall, DDOE Air Quality Division, at 1200 First Street, NE, 5th Floor, Washington, DC 20002, or submit comment to her by email at cecily.beall@dc.gov. No written or email comments will be accepted after August 22, 2011. For more information or to find out if the public hearing has been canceled, contact Ms. Jessica Daniels at 202-741-0862 or jessica.daniels@dc.gov.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Monday, September 19, 2011, @ 6:30 p.m.**
Office of Zoning Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 05-28F: Application of Lano Parcel 12 LLC for Final Approval of a Planned Unit Development and Zoning Map Amendment (Square 5041, Lots 811, 812, and 822; and Square 5056, Lots 806, 812, 814, and 821 (the "Property"))

THIS CASE IS OF INTEREST TO ANC 7D

On June 27, 2011, the Office of Zoning received an application from Lano Parcel 12, LLC for final approval of a planned unit development and Zoning Map Amendment for property located in Ward 7 in Square 5041, Lots 811, 812, and 822 and Square 5056, Lots 806, 812, 814, and 821. The application was identified as Case No. 05-28F. The Zoning Commission partially waived 11 DCMR § 2406.7 to permit the applicant to provide written notice to the Advisory Neighborhood Commission for the area within which the property is located and to owners of property within two hundred feet (200 ft.) of the perimeter of the property four days prior to filing its application, rather than the ten days required by that regulation.

The application seeks approval for the landscaping and hardscaping of a park that will be open to the public located at the center of the Parkside PUD. The park is approximately one acre in size. It will include landscaping, pavers, and lighting and seating fixtures. The park could also include a pavilion, fountain, or sculpture in the center, depending on the outcome of design charrettes to be held with the community prior to the hearing. The application also includes a request to rezone the Property from the R-5-A and C-2-B Zone Districts to the C-3-A Zone District.

The Office of Planning provided reports on July 1, 2011. The Zoning Commission set down the application for a public hearing at its public meeting on July 11, 2011.

The public hearings for the case will be conducted in accordance with the contested case provisions of the Zoning Regulations, 11 DCMR § 3022.

How to participate as a witness.

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

Z.C. PUBLIC HEARING NOTICE
Z.C. CASE NO. 05-28F
PAGE 2

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of 11 DCMR § 3022.3.

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to exercise the other rights of parties as specified in the Zoning Regulations.

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. Persons seeking party status **shall file with the Commission, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application**. This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning's website at: www.dcoz.dc.gov.

To the extent that the information is not contained in the Applicant's prehearing submission as required by 11 DCMR § 3013.1, the Applicant shall also provide this information not less than 14 days prior to the date set for the hearing.

If an affected Advisory Neighborhood Commission (ANC) intends to participate at the hearing, the ANC shall submit the written report described in § 3012.5 no later than seven (7) days before the date of the hearing. The report shall contain the information indicated in § 3012.5 (a) through (i).

Time limits.

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

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

Pursuant to § 3020.3, the Commission may increase or decrease the time allowed above, in which case, the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

Information responsive to this notice should be forwarded to the Director, Office of Zoning, Suite 200-S, 441 4th Street, N.W., Washington, D.C. 20001. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

ANTHONY J. HOOD, KONRAD W. SCHLATER, GREG M. SELFRIDGE, PETER G. MAY, AND MICHAEL G. TURNBULL -------- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY JAMISON L. WEINBAUM, DIRECTOR, AND BY SHARON SCHELLIN, SECRETARY TO THE ZONING COMMISSION.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Monday, October 3, 2011, @ 6:30 p.m.**
Office of Zoning Hearing Room
441 4th Street, N.W. Suite 220-S
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 11-16 (Office of Planning – Text Amendment to § 721.3)

THIS CASE IS OF INTEREST TO ALL ANCs

On July 12, 2011, the Office of Zoning received a report that served as a petition from the District of Columbia Office of Planning requesting an amendment to § 721.3 (k) of the Zoning Regulations (11 DCMR) to exempt firearms retail sales establishments located in District law enforcement or licensing agencies from complying with the radius limitations of that provision. This would permit a retail sales establishment use at a District law enforcement agency located within 300 feet of a Residence (R) or Special Purpose (SP) Zone District; or a church or other place of worship, a public or private school, a public library, or a playground

At a special public meeting on July 14, 2011, the Zoning Commission set down this case for a public hearing. The Commission also took action to adopt the amendment on an emergency basis and authorized the issuance of a notice of proposed rulemaking. As a preliminary matter, the Commission waived the requirement of 11 DCMR § 3005.3 that the proposed agenda for each meeting be posted in the office of the Commission and available to the public at least four days prior to a meeting. The circumstances that justified the emergency adoption of the rule, as explained in the Notice of Emergency and Proposed Rulemaking published elsewhere in this volume, also justified the attenuated notice. The agenda was posted a day prior to the hearing, and was also published on the Office of Zoning website and distributed to an email list of persons who have indicated an interest in receiving notices of this kind. The Commission also authorized the immediate advertisement of this hearing by waiving the 20-day period between receipt of a supplement filing and publication, as stated in § 3013.1.

The proposed amendments to the Zoning Regulations are as follows:

Title 11 of the District of Columbia Municipal Regulations, ZONING, Chapter 7, COMMERCIAL DISTRICTS, § 721, USES AS A MATTER OF RIGHT (C-2), § 721.3, is amended by inserting the phrase ", other than an establishment located at a District law enforcement or licensing agency," after the phrase "provided that no portion of the establishment", so that the subsection reads as follows:

721.3 In addition to the uses permitted in C-1 Districts by § 701.4, the following retail establishments shall be permitted in a C-2 District as a matter of right:

…

(k) Firearms retail sales establishments, provided that no portion of the establishment, other than an establishment located at a District law enforcement or licensing agency, shall be located within three hundred feet (300 ft.) of:

(1) A residence (R) or Special Purpose (SP) District; or

(2) A church or other place of worship, public or private school, public library, or playground.

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

The public hearing on this case will be conducted as a rulemaking in accordance with the provisions of § 3021. The Commission will impose time limits on testimony presented to it at the public hearing.

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information should be forwarded to the Secretary of the Zoning Commission, Office of Zoning, Suite 200-S, 441 4th Street, N.W., Washington, D.C. 20001. Please include the number of the particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

ANTHONY J. HOOD, KONRAD W. SCHLATER, GREG M. SELFRIDGE, PETER G. MAY, AND MICHAEL G. TURNBULL -------- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY JAMISON L. WEINBAUM, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
NOTICE OF FINAL RULEMAKING

The State Superintendent of Education, pursuant to section 3(b)(11) of the District of Columbia State Education Office Establishment Act of 2000, effective October 21, 2000, (D.C. Law 13-176; D.C. Official Code § 38-2602(b)(11)) (2010 Supp.) hereby gives notice of the adoption of a final rule amending subtitle A (Office of the State Superintendent of Education) of title 5 (Education) of the District of Columbia Municipal Regulations (DCMR) by adding a new chapter 27 entitled "Interscholastic Athletics. " This final rule amends subtitle E (Original Title 5) of title 5 (Education) of the DCMR by repealing chapter 27 (Interscholastic Athletics).

The purpose of the rulemaking is to establish uniform eligibility and safety standards for interscholastic athletics in District of Columbia public schools, including public charter schools.

The Notice of Proposed Rulemaking was published in the *D.C. Register* on May 13, 2011, at 58 DCR 4162. Action was taken on June 30, 2011 to finalize this rule. The rule is being adopted in substantially the same form as proposed, with one clarification relating to semesters of eligibility as proposed in subsection 2701.4(r) and (s). In addition, a few technical changes were made to correct citation references, and punctuation and grammatical errors.

Subtitle A, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, of Title 5, EDUCATION, of the DCMR is amended by adding a new chapter 27 to read as follows:

CHAPTER 27 INTERSCHOLASTIC ATHLETICS

2700 GENERAL POLICY

2700.1 Participation by a student in grades four (4) through twelve (12) in interscholastic athletic programs provided by a public school in the District of Columbia shall be governed by the rules and procedures set forth in this chapter.

2700.2 Interscholastic athletics shall place an emphasis on teaching principles and practices of good sportsmanship, ethical conduct, and fair play through athletics, as well as provide instruction in the skills of athletics.

2700.3 Each Local Education Agency (LEA) shall promulgate and implement interscholastic athletic standards, including without limitation standards related to student eligibility, participation, satisfactory progress toward graduation, physical health, training and practice, equipment, the physical environment, challenges to eligibility, probationary actions, grievance procedures, and first aid.

2700.4 A student shall not be excluded from participation in, be denied the benefits of, be treated differently from other students, or otherwise be unlawfully discriminated against in interscholastic athletics, based on, but not limited to, race, color,

religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity, familial status, family responsibilities, genetic information, matriculation, political affiliation, disability, source of income, and place of residence or business.

2700.5 Notwithstanding the requirements of § 2700.4, a public school may operate separate sports teams for members of each sex if selection for the teams is based upon competitive skill or the activity involved is a contact sport.

2700.6 Notwithstanding the requirements of § 2700.4, a public school may operate a sports team for members of only one (1) sex. If a school offers a particular sport for members of one (1) sex but no such is available for members of the opposite sex, members of the excluded sex shall be allowed to try out for the team. Selection for the team shall take into consideration appropriate skill level, safety, and other standards for participation on such team

2700.7 Except as provided in § 2700.10, varsity teams in senior high schools shall be limited to eligible students enrolled in that high school in grades nine (9), ten (10), eleven (11), and twelve (12).

2700.8 Except as provided in § 2700.10, junior varsity teams in senior high schools shall be limited to eligible students enrolled in that high school in grades nine (9), ten (10), and eleven (11).

2700.9 A student who has participated in varsity competition in a sport during a school year shall be ineligible to participate in junior varsity competition in the same sport in the same year.

2700.10 A student in grade nine (9), ten (10), eleven (11), or twelve (12) who attends a public school in which a desired sport is not offered may participate in the sport on a team at another school as provided by regulation or policy of the LEA.

2700.11 The LEA shall announce annually the sport seasons for interscholastic contests.

2700.12 The State Superintendent may establish an advisory committee on interscholastic athletics to advise LEAs or Office of the State Superintendent Education on matters pertaining to interscholastic athletic programs in District of Columbia public schools.

2701 ELIGIBILITY FOR PARTICIPATION

2701.1 The certification of the eligibility of students to participate in interscholastic athletics shall occur, pursuant to procedures to be established by the Chancellor of the District of Columbia Public Schools (DCPS) or the director of the LEA, as applicable, as follows:

(a) Principals shall be responsible for determining and certifying the eligibility of students to participate in interscholastic athletics by submitting a list of eligible students to the LEA's athletic director two (2) weeks before the first scheduled game, whether league or non-league;

(b) A supplemental eligibility list may be submitted two (2) weeks after the first game. However, students on the supplemental eligibility list may not participate without the prior written approval of the LEA's athletic director. The supplemental eligibility list may be submitted for league games only; and

(c) Each LEA's athletic director shall be responsible for verifying the eligibility of each student within one (1) week after receipt of the eligibility list, including a supplemental eligibility list.

2701.2 Neither a school nor a representative of a school shall seek to influence a student to transfer from one (1) school to another for the purpose of participating in interscholastic athletics.

2701.3 Student eligibility for participation in interscholastic athletics may be challenged in writing, based upon a reason to believe that the student may not meet the eligibility requirements set forth in § 2701.4 of this chapter. The LEA shall be responsible for investigating the matter and shall issue a written final decision.

2701.4 In order to be certified as eligible to participate in interscholastic athletics at a public school, and to maintain such eligibility, a student shall meet the following requirements:

(a) A student shall be a resident of the District of Columbia, as defined by statute and the rules set forth in 5 DCMR A § 5001.1, except as provided in paragraph (b) of this subsection;

(b) A non-resident of the District of Columbia, whose admission to a public school in the District of Columbia complies with applicable District law and rules of this title and who has either paid, or is current in payment of, his or her nonresident tuition fee; transfers without a corresponding change in residence of his or her parents or guardians; or does not otherwise meet the transfer criteria as provided for in § 2701.4(d) is eligible to participate in athletic interscholastic programs upon satisfactory completion of two (2) full consecutive semesters at a District of Columbia public school; provided, that the LEA's athletic director may, within ten (10) days after the beginning of a sport season, seek a waiver of this semester completion requirement, upon a request to the LEA by an

affected student, if the student is able to show good cause or undue hardship for compliance with this requirement;

(c) A student shall be enrolled within the first twenty (20) calendar days of a semester in the school where he or she wishes to participate in interscholastic athletics, except as provided for in § 2700.8 and paragraph (d) of this subsection;

(d) A student who transfers enrollment from any school to a public school in the District of Columbia on the basis of a change in address may become immediately eligible to participate in interscholastic athletics when the change in address has been verified in accordance with §§ 5000 through 5005 of this subtitle, if the student meets all other eligibility requirements in this section and transfers because:

(1) The student moves to a new bona fide permanent residence, with his or her parent(s) or legal guardian, in the attendance area of a school to which the student transfers. A permanent residence is a domicile that is used by the parent(s) or guardian as the address for mail, telephone, registration for voting, and the attendance zone for other school-aged family members;

(2) The student is a ward of the court or state and is placed in another school by court order;

(3) The student changes residence to live with a guardian or foster home as a result of the student becoming an orphan or for reasons outside the control of the student and the student's parents, guardians, or foster parents, if the reasons are significant, substantial, or compelling. A student shall not be eligible if a guardian or custodian is appointed for the purpose of making a student eligible, including a situation where a coach obtains custody or guardianship of a student in order to establish the student's eligibility;

(4) The student marries and transfers due to the establishment of a new residence;

(5) The student's school ceases to operate;

(6) A reorganization, consolidation, or annexation of the student's school occurs;

(7) The student is ordered to transfer for non-athletic purposes;

(8) The student transfers due to a family court custody decree or because of the death of a parent or legal guardian;

(9) The student has special needs, as identified by Individualized Education Program (IEP) or 504 Plan, if the principal of the sending school attests in writing that the school is unable to provide the support services necessary for the student's academic success;

(10) The student transfers as provided for in 5 DCMR E § 3805 because his or her school has been designated as a persistently dangerous school;

(11) The student transfers as provided for in 5 DCMR E § 3809 because he or she has been the victim of a violent crime or a pattern of harassment or sexual harassment;

(12) The student is a qualified foreign exchange student under § 2701.4(e);

(13) The student is an international student residing in the District of Columbia with his or her parents;

(e) An international student participating in a foreign exchange program shall be considered immediately eligible for a maximum period of one (1) calendar school year or two (2) consecutive semesters if the student:

(1) Has not completed his or her home secondary school program;

(2) Meets all other eligibility requirements of this section;

(3) Has been randomly assigned to his or her host parents and school and neither the school the student attends nor any person associated with the school has had input in the selection of the student and no member of the school's coaching staff, paid or voluntarily, serves as the resident family of the student;

(4) Possesses a current J-1 visa, issued by the U.S. State Department; and

(5) Is attending school under a foreign exchange program on the current Advisory List of International Educational Travel and Exchange Programs published by the Council on Standards for International Education Travel and such program assigns students

to schools by a method which insures that no student, school, or other interested party may influence the assignment;

(f) An international student not participating in a foreign exchange program shall be treated as all other students who transfer schools under paragraphs (c) and (d) of this subsection;

(g) A student in grade seven (7), eight (8), nine (9), ten (10), eleven (11), or twelve (12) shall submit to the principal an original or certified true copy of the student's birth certificate, except that in cases where a student provides a certification from a bureau of vital statistics, or comparable agency, that no birth certificate exists for the student, satisfactory documentary proof of the student's date of birth shall be accepted in accordance with provisions set forth in 5 DCMR E § 2002.6;

(h) A student who is less than eighteen (18) years of age shall submit to the principal a statement signed by a parent or guardian of the student indicating the sport for which the consent of the parent or guardian is being given for the student to participate;

(i) A student shall provide a physician's certification that the student has been examined and found to be physically fit for the sport in which the student seeks to participate;

(j) A student shall be covered by appropriate accident insurance, obtained either by his or her LEA or his or her parent or guardian and approved by his or her school's LEA, during each season the student participates. Appropriate notice of the coverage and cost of the accident insurance obtained by his or her school's LEA shall be provided annually to parents or guardians and adult students. A parent or guardian submitting a policy for approval by the student's school's LEA shall do so within the time specified by the LEA. In addition students participating in football shall be insured by additional football accident insurance which shall be paid for by the LEA in which the student is enrolled.

(k) A student shall maintain regular school attendance, having been present at least two-thirds (2/3) of the school days during the semester preceding the sport season and have no more than three (3) unexcused absences consistent with chapter 21 of subtitle A of title 5, during the season of participation. Completion of a summer school program shall not be counted as a semester of attendance for the purposes of establishing eligibility pursuant to this subsection;

(l) A student in grade nine (9), ten (10), eleven (11), or twelve (12), in regular education and career development programs or in Level I and Level II

programs of the continuum of services available to special education students, shall have a grade point average of at least 2.0 ("C") as required by chapter 22 of subtitle E of title 5;

(m) A student in grade four (4), five (5), six (6), seven (7), or eight (8) shall not fail more than one (1) subject at the end of the grading period immediately preceding the sport season in which the student wishes to participate;

(n) The student shall not have graduated from the school for which he participates in a sport; provided, that an eligible student whose graduation exercises are held before the end of the school year may continue to participate in interscholastic athletics until the end of that school year;

(o) A student who has attained the following ages on or before July 1 preceding the following school year shall not be eligible to participate in interscholastic athletics offered for the grade levels indicated:

(1) Grades four (4) and five (5): twelve (12) years;

(2) Grades six (6) through eight (8): fifteen (15) years; and

(3) Grades nine (9) through (12): nineteen (19) years;

(p) A student shall maintain amateur standing by engaging in sports only for the physical, educational, and social benefits derived from sports and by not accepting, directly or indirectly, a remuneration, gift, or donation based on his or her participation in a sport other than approved school awards;

(q) A student may represent only one (1) school in the same sport during a school year;

(r) A student is eligible to participate in regular season, playoff, or championship interscholastic athletic contests for a maximum of:

(1) Four (4) semesters (two (2) seasons) in grades four (4) through five (5);

(2) Six (6) semesters (three (3) seasons) in grades six (6) through eight (8); and

(3) Eight (8) semesters (four (4) seasons) in grades nine (9) through twelve (12), consistent with subsection (s) below.

(s) Semester and season eligibility computations shall begin from the semester in which the student was enrolled for the first time in any school in grades four (4), six (6), and nine (9), and shall be counted continuously thereafter, regardless of whether he or she remains continuously enrolled in school. For student athletes in grades nine (9) through twelve (12), eligibility shall cease at the end of the eighth semester after first entering the ninth (9^{th}) grade.

(t) Exceptions to paragraphs (q) and (r) of this subsection may be allowed pursuant to hardship policies and procedures established by the athletic director of each LEA.

(u) A student in grade nine (9), ten (10), eleven (11), or twelve (12) shall not participate in the same individual or team sport outside of school, or with a team, an organized league, tournament meet, match or game between the first and last scheduled contest of the school team during the season of the sport; provided, that a student who is selected to represent the United States in international amateur competition shall not become ineligible in school competitions for participating in qualifying trials. The following sports shall be exempted from the restrictions of this paragraph:

(1) Golf;

(2) Swimming;

(3) Tennis;

(4) Gymnastics;

(5) Volleyball;

(6) Softball;

(7) Track and field;

(8) Cross-country;

(9) Crew;

(10) Soccer;

(11) Cheerleading;

(12) Lacrosse;

(13) Rugby;

(14) Field Hockey; and

(15) Wrestling.

(v) A student shall participate only under the name by which he or she is registered in the public school he or she attends;

(w) A student's participation shall be classified as follows:

(1) Grades four (4) and five (5) shall participate on the elementary level;

(2) Grade six (6) shall participate on the elementary level, unless enrolled in grade (6) at a middle school, in which case shall participate on the middle school level;

(3) Grades seven (7) and eight (8) shall participate on the middle school level; and

(4) Grades nine (9) through twelve (12) shall participate on the senior high school level;

(x) A student enrolled in an Education Center may participate in one (1) division during a sports season; and

(y) A student who needs less than two (2) classes (one (1) to two (2) Carnegie units) to graduate from twelfth (12th) grade and who transferred to a high school within the past twelve (12) months shall not participate in any interscholastic athletic activity for the duration of the student's matriculation at that school.

2701.5 The grade designation on the student's official record, or official transfer record, shall be controlling in determining whether a student is assigned to grades four (4) through six (6) as used in this chapter.

2701.6 A student shall be considered to be assigned to grades seven (7) through twelve (12), as used in this chapter, based upon one (1) of the following:

(a) The qualifications adopted by the Chancellor of DCPS or the director of the school's LEA, as applicable; or

(b) The grade designation on the official transfer record from another jurisdiction; provided, that the student has met the minimum criteria,

required for the grade, pursuant to the rules of the Chancellor of DCPS or of the director of the school's LEA, as applicable.

2701.7 A student currently attending a public school in the District of Columbia who is ineligible to participate in interscholastic athletics at the time of transfer from one school to another, for any reason other than failure to meet the requirements of this chapter or of chapter 22 of subtitle E of title 5, shall not be considered for eligibility to the receiving school until the student has been enrolled for a full semester.

2701.8 A student who is ineligible due solely to his or her failure to meet the graduation requirements of chapter 22 of subtitle E of title 5 shall become eligible at the end of the grading period in which he or she meets the requirements of that chapter.

2701.9 A student who is ineligible to participate in interscholastic athletics may not play, practice, or otherwise participate with a public school sports team in the District of Columbia during the period of such ineligibility.

2702 SANCTIONS FOR INELIGIBILITY; CHALLENGES

2702.1 A school officer or coach who knowingly allows an ineligible student to participate in an interscholastic athletic program or contest shall be subject to disciplinary action pursuant to LEA regulation, policy, or procedure.

2702.2 A school shall forfeit all contests during which an ineligible student participates.

2702.3 Challenges to eligibility and protests shall be referred to the LEA's athletic director, who shall have the authority to investigate and render decisions on such charges pursuant to LEA regulation, policy, or procedure.

2702.4 Each LEA shall establish regulations or procedures for probationary actions and determination of ineligibility and interscholastic athletics grievances.

2703 ALL-STAR GAMES

2703.1 A student who participates in a team sport may participate in an "all-star" competition for the sport that occurs outside the interscholastic season of the sport without jeopardy to his or her eligibility if:

(a) The all-star competition is an activity sanctioned by the District of Columbia or another National Federation of State High School Association (NFHS) member;

(b) All participants in the all-star competition are graduating seniors or students completing their athletic eligibility at the end of the school year;

(c) The student has played in no more than one (1) other all-star competition in his or sport; and

(d) The all-star competition occurs after the student has participated in his or her final contest for his or her school.

2703.2 A senior who fails to comply with § 2703.1 shall be subject to a penalty that may result in the loss of athletic eligibility for the balance of the school year. For all other students, the penalty may result in loss of eligibility for the next season in the sport in which the student participated in the all-star competition.

2704 LEA REGULATIONS

2704.1 Each LEA may establish regulations, policies, and procedures necessary to carry out the provisions of this chapter.

2799 DEFINITIONS

2799.1 When used in this chapter, the following terms shall have the meanings ascribed:

Athletic director – a person who holds this position of athletic director or a person or entity that performs the functions of an athletic director as designated by an LEA's chancellor, director, board of directors, or governing entity.

Day – one (1) calendar day, unless otherwise stated.

League – an association of sports teams or clubs that compete mainly against each other.

Participate – to be included on the team roster as a member of a recognized school team to play in practices, games, tryouts, and competitions, or engage in other recognized activities as part of the team.

Week – seven (7) calendar days, unless otherwise stated.

Subtitle E, ORIGINAL TITLE 5, of title 5, EDUCATION, of the DCMR is amended as follows:

Chapter 27, INTERSCHOLASTIC ATHLETICS, is repealed.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

FORMAL CASE NO. 766, IN THE MATTER OF THE COMMISSION'S FUEL ADJUSTMENT CLAUSE AUDIT AND REVIEW PROGRAM;

FORMAL CASE NO. 982, IN THE MATTER OF AN INVESTIGATION INTO POTOMAC ELECTRIC POWER COMPANY REGARDING INTERRUPTION TO ELECTRIC ENERGY SERVICE;

FORMAL CASE NO. 991, IN THE MATTER OF AN INVESTIGATION INTO EXPLOSIONS OCCURRING IN OR AROUND THE UNDERGROUND DISTRIBUTION SYSTEMS OF THE POTOMAC ELECTRIC POWER COMPANY; AND

FORMAL CASE NO. 1002, IN THE MATTER OF THE JOINT APPLICATION OF PEPCO AND THE NEW RC, INC. FOR AUTHORIZATION AND APPROVAL OF MERGER TRANSACTION

1. The Public Service Commission of the District of Columbia (Commission) hereby gives notice, pursuant to 34-802 of the District of Columbia Official Code and in accordance with section 2-505 of the District of Columbia Official Code[1] of its final rulemaking action taken on July 7, 2011. in Order No. 16427 The Commission repeals subsections 3603.10 through 3603.17 of chapter 36 of title 15 of the District of Columbia Municipal Regulations (DCMR) and adopts the following provisions governing the establishment of electric quality of service standards.

2. On March 11, 2011, the Commission of the District of Columbia caused to be published in the *D.C. Register* a Notice of Proposed Rulemaking in the above-captioned proceedings.[2] On April 8, 2011, the Commission caused to be published a Second Notice of Proposed Rulemaking superseding that Notice of Proposed Rulemaking[3].

3. Pursuant to subsection 310.6 (c) of chapter 3 of title 1 of the DCMR, subsection 3603.13 has been re-worded by adding the phrase, "or penalty" after the term "forfeiture" in order to clarify the intent of the rule by incorporating language from both D.C. Official Code §§ 34-706 and34-1508 (2010 Repl.). The D.C. Official Code edition year was also corrected to reflect the current version of the D.C. Official Code in the referenced citation.

4. The following amendments to chapter 36 of title 15 of the DCMR will become effective upon the date of publication of the Notice of Final Rulemaking in the *D.C. Register*:

---

1 D.C. Official Code § 2-505 (2006 Repl.) and D.C. Official Code § 34-802 (2010 Repl.).

2 *See* 58 DCR 2240 (March 11, 2011).

3 See 58 DCR 3002 (April 8, 2011).

3603.10 The utility shall not exceed the benchmark levels established for the following indices, calculated using District of Columbia data: System Average Interruption Frequency Index (SAIFI) and System Average Interruption Duration Index (SAIDI) (stated in hours).

3603.11 The benchmark levels for SAIDI and SAIFI are established as follows:

(a) For 2013, SAIDI shall be two and sixty-eight hundredths (2.68) and SAIFI shall be one and thirteen hundredths (1.13);

(b) For 2014, SAIDI shall be two and forty-three hundredths (2.43) and SAIFI shall be one and nine hundredths (1.09);

(c) For 2015, SAIDI shall be two and twenty-one hundredths (2.21) and SAIFI shall be one and five hundredths (1.05);

(d) For 2016, SAIDI shall be two (2.00) and SAIFI shall be one and two hundredths (1.02);

(e) For 2017, SAIDI shall be one and eighty-one hundredths (1.81) and SAIFI shall be ninety-eight hundredths (0.98);

(f) For 2018, SAIDI shall be one and sixty-five hundredths (1.65) and SAIFI shall be ninety-five hundredths (0.95);

(g) For 2019, SAIDI shall be one and forty-nine hundredths (1.49) and SAIFI shall be ninety-two hundredths (0.92); and

(h) For 2020, and thereafter, SAIDI shall be one and thirty-five hundredths (1.35) and SAIFI shall be eighty-nine hundredths (0.89).

3603.12 The calculations of the indices in subsection 3603.11 shall be based on District of Columbia-specific data and shall exclude OMS data for Major Service Outages.

3603.13 If the utility fails to comply with subsection 3603.10, it may be subject to forfeiture or penalty in accordance with D.C. Official Code §§ 34-706 and 34-1508 (2010 Repl.). The utility shall also be required to develop a corrective action plan, which it shall file for the Commission's information within thirty (30) days of filing the Consolidated Report.

3603.14 The corrective action plan shall clearly describe the cause(s) of the utility's failure to comply with subsection 3603.10 and describe the corrective measure(s) to be taken to ensure that the standard is met or exceeded in the future. The plan shall provide targets for completion of the corrective measure(s) and for meeting or exceeding the standards.

3603.15 The utility shall report on the progress of the corrective action plan in the following year's Consolidated Report submitted to the Commission.

3603.16 The utility shall report annual reliability indices of SAIFI, SAIDI and CAIDI (with and without Major Service Outages and using District of Columbia-specific data) in the annual Consolidated Report of the following year.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF PROPOSED RULEMAKING

Interstate Transport of Nitrogen Oxide Emissions from Non-electric Generating Unit Sources

The Director of the District Department of the Environment (DDOE), pursuant to the authority set forth in sections 5 and 6(b) of the District of Columbia Air Pollution Control Act of 1984, as amended, effective March 15, 1985 (D.C. Law 5-165; D.C. Official Code §§ 8-101.05 and 8-101.06(b)(2008 Repl.)), section 107(4) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.07(4)), Mayor's Order 98-44, dated April 10, 1998, and Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice of the intent to adopt the following amendments to chapter 10 of title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR) in not less than forty-five (45) days from the date of publication of this notice in the *D.C. Register*.

This rulemaking action proposes to regulate the interstate transport of nitrogen oxide (NO_x) emissions from non-electric generating unit (EGU) sources, by repealing 20 DCMR chapter 10 in its entirety and replacing the chapter with a source category NO_x emissions cap.

NO_x is a precursor to fine particulate matter ($PM_{2.5}$) and ozone, two serious threats to human health in the District. $PM_{2.5}$ is associated with a number of health effects including premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), lung disease, decreased lung function, asthma attacks, and certain cardiovascular problems such as heart attacks and cardiac arrhythmia. 70 Fed. Reg. 25162, 25168 (May 12, 2005). Short-term (1- to 3-hour) and prolonged (6- to 8-hour) exposures to ambient ozone have been linked to a number of adverse health effects, such as irritation of the respiratory system, temporary reduced lung function, aggravated asthma symptoms, and inflammation and damage to lining of the lungs, which may lead to permanent changes in lung tissue and irreversible reductions in lung function. 70 Fed. Reg. 25162, 25169 (May 12, 2005).

The District initially addressed the interstate transport of NO_x emissions by adopting the Ozone Transport Commission (OTC) NO_x Budget Program. The OTC is comprised of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, the northern counties of Virginia, and the District of Columbia. In September of 1994, the OTC states (except for Virginia) agreed to a memorandum of understanding (MOU) to achieve regional emissions reductions of NO_x. In signing the MOU, states committed to developing and adopting regulations that would reduce region-wide NO_x emissions in 1999 and further reduce emissions in 2003.

The United States Environmental Protection Agency (EPA) promulgated a rule on October 27, 1998, known as the "NO_x SIP Call," requiring twenty-two (22) states and the District to submit state implementation plans (SIPs) that address the regional transport of ground-level ozone. 63 Fed. Reg. 57356 (October 27, 1998). The OTC states finalized a model rule in collaboration with

EPA, industry, utilities, and environmental groups, to impose seasonal limits on NO_x emissions and implement a NO_x emissions cap and trade program. Title 20 DCMR §§ 1000 to 1013 incorporated requirements of the OTC's NO_x Budget Program model rule.

In 2003, EPA began to administer the NO_x Budget Trading Program under the NO_x SIP Call. The requirements of EPA's NO_x SIP Call are incorporated by reference in 20 DCMR § 1014.

On May 12, 2005, EPA published the Clean Air Interstate Rule (CAIR), finding that twenty-eight (28) States and the District of Columbia contribute significantly to the nonattainment of National Ambient Air Quality Standards (NAAQS) for $PM_{2.5}$ and/or the eight (8)-hour ozone standard. 70 Fed. Reg. 25162 (May 12, 2005). CAIR required these states to implement controls of sulfur dioxide (SO_2) and/or NO_x, and included a NO_x ozone season trading program intended to phase out the NO_x SIP Call cap and trade program. 70 Fed. Reg. 25162 (May 12, 2005). In July 2008, the U.S. Circuit Court for the District of Columbia remanded CAIR and the CAIR Federal Implementation Plans (FIPs) to EPA without vacatur. *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). On August 2, 2010, EPA responded by publishing the Ozone Transport Rule, a proposed rulemaking to replace CAIR. 75 Fed. Reg. 45210 (August 2, 2010). The District is currently operating under a CAIR FIP, which will eventually be replaced by EPA's new Ozone Transport Rule FIP.

Both CAIR and the proposed Transport Rule address only Electric Generating Units (EGUs) that were previously a part of the NO_x SIP Call. After 2008, EPA stopped administering the NO_x SIP Call trading program and required NO_x SIP Call states to sunset their NO_x SIP Call trading program provisions. States with non-EGU units that participated in the NO_x SIP Call are required to take regulatory action to continue to meet NO_x SIP Call non-EGU emissions reduction obligations adopted in their State Implementation Plans (SIPs). 40 C.F.R. 51.905.

According to CAIR, to achieve NO_x SIP Call reductions from non-EGUs, control measures must either: "(A) impose a NO_x mass emissions cap on each source; (B) impose a NO_x emissions rate limit on each source and assume maximum operating capacity for every source for the purpose of estimating mass NO_x emissions; or (C) impose any other regulatory requirement which the State has demonstrated to EPA provides equivalent or greater assurance than [options A or B] that will comply with the State's NO_x budget in the 2007 ozone season." 40 C.F.R. 51.121(f)(2).

The District currently has one (1) source that was regulated under the NO_x SIP Call but cannot participate in the CAIR or proposed Transport Rule program because it is not an EGU. In this rulemaking action, the District proposes to repeal the outdated NO_x Budget Program provisions that pre-dated the NO_x SIP Call (20 DCMR §§ 1000 through 1013), because this program ended in 2003. Additionally, the provisions of 20 DCMR § 1014, the NO_x Budget Trading Program for SIPs (a.k.a. the NO_x SIP Call) are also being repealed, as they do not apply to any control period after 2008. These provisions will be replaced by a NO_x emissions limit for the one (1) applicable non-EGU source in the District, the U.S. General Services Administration Central Heating and Refrigeration Plant (GSA CHRP), using a source category regulation. The proposed rules also include emissions monitoring, record-keeping, and reporting requirements, along with enforceable mechanisms to ensure that the source, including new or modified units, will not exceed total NO_x emissions projected for the source for the 2007 ozone season. Finally, the

definitions in 20 DCMR § 1099 are being repealed and replaced with new definitions that address the new regulations.

Once finalized, this regulation will be submitted to EPA as a SIP revision to satisfy the same portion of the District's NO_x emission reduction requirements that the NO_x SIP Call once satisfied. If any new source becomes subject to this chapter, the District will amend these regulations accordingly. EGU sources, presently regulated under a CAIR FIP, will be regulated by the new Ozone Transport Rule when it is finalized.

CHAPTER 10 – NITROGEN OXIDES EMISSIONS BUDGET PROGRAM is repealed and replaced with:

CHAPTER 10 – NON-EGU LIMITS ON NITROGEN OXIDE EMISSIONS

1000 APPLICABILITY

1000.1 This chapter applies to any fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system at a nitrogen oxide (NO_x) source that has a maximum design heat input of greater than two hundred fifty Million British Thermal Units (250 MMBtu) per hour and is subject to a NO_x emission limit pursuant to § 1001.1.

1000.2 With regard to a NO_x source, fossil fuel-fired means:

(a) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than fifty percent (50%) of the annual heat input on a British Thermal Unit (Btu) basis during any year; or

(b) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than fifty percent (50%) of the annual heat input on a Btu basis during any year, provided that the source shall be "fossil fuel-fired" as of the date, during such year, on which the source begins combusting fossil fuel.

1001 NO_x EMISSIONS LIMIT PER SOURCE

1001.1 The total amount of NO_x mass emissions from all units at an applicable NO_x source during a control period shall not exceed the limits in the following table:

Maximum Allowable NO_x Emissions Limits for the
United States General Services Administration (GSA)
Central Heating and Refrigeration Plant (CHRP),
in tons per control period (tpcp):

Plant Unit	NO_x Emissions Limit
GSA CHRP	25
New Unit Set-Aside Equivalent	1
Maximum Allowable NO_x Emissions (tpcp)	**26**

1001.2 In the event that the emissions limit specified in § 1001.1 is different from the limit specified in any permit or regulation unrelated to this chapter, the more stringent limit shall apply.

1002 EMISSIONS MONITORING AND TESTING

1002.1 The owner or operator of each NO_x source shall comply with the continuous emissions monitoring system (CEMS) provisions of 40 C.F.R. Part 75, subpart H, where the emissions monitoring system shall:

(a) Continuously monitor the NO_x emissions from the source;

(b) Continuously record the NO_x emissions from the source;

(c) Be installed, certified, operated, maintained, and quality assured in a manner approved by the District Department of the Environment (Department) and acceptable to the United States Environmental Protection Agency (EPA); and

(d) Demonstrate that the NO_x emissions do not exceed the maximum allowable NO_x emission limit specified in § 1001.1 of this chapter.

1002.2 Testing shall meet the following requirements:

(a) Be conducted using methods approved by the Department and acceptable to EPA;

(b) Be conducted by the end of each calendar year; and

(c) Demonstrate that the NO_x emissions do not exceed the maximum allowable NO_x emission limit specified in § 1001.1 of this chapter.

1003 RECORD-KEEPING AND REPORTING

1003.1 Notwithstanding the general reporting requirements in 20 DCMR §§ 500 and 501, the owner or operator of each NO_x source shall retain, for a period of at least five (5) years:

(a) Information on the amount of NO_x emissions from sources, such as records of all measurements, data, reports, and other information required by this chapter and the provisions of 40 C.F.R. Part 75, subpart H; and

(b) Other information deemed necessary by the Department that enables the District to determine whether sources are in compliance with applicable portions of the control measures.

1003.2 The owner or operator of each NO_x source shall begin recording data the first hour that the NO_x source is operating for reporting purposes.

1004 PENALTIES

1004.1 The Department may enforce the provisions of this chapter pursuant to applicable law and regulations, including those providing for civil, criminal, and administrative penalties pursuant to 20 DCMR § 105, and following the guidelines below:

(a) There shall be a presumption that any excess emissions identified during a control period that occurred during the entire control period and constitutes one hundred fifty-three (153) days of violations (representing the number of days in a control period), unless the NO_x source can demonstrate, to the satisfaction of the Department, that a lesser number of days of violation should apply; and

(b) Each ton of excess emissions shall be a separate violation.

1099 DEFINITIONS

1099.1 When used in this chapter, the following terms shall have the meanings ascribed:

Continuous emissions monitoring system or CEMS – the equipment used to sample, analyze and measure air pollutants and provide a permanent record of emissions expressed in pound per Million British Thermal Units (lb/MMBtu) and tons per day. The following component parts shall be included in a continuous monitoring system:

(a) NO_x pollutant concentration monitor;

(b) Diluent gas (oxygen or carbon dioxide) monitor;

(c) Data acquisition and handling system, and

(d) Flow monitor (where appropriate).

Control period – the period beginning May 1st of each year and ending on September 30th of the same year, inclusive.

Department – the District Department of the Environment (DDOE).

Excess emissions – the NO_x emissions, in tons, that a NO_x source reports during a control period that is greater than the maximum allowable NO_x emissions limit in § 1001.1 of this chapter.

Heat input – the product (expressed in MMBtu/time) of the gross calorific value of the fuel (expressed in Btu/lb) and the fuel feed rate into the combustion device (expressed in fuel mass/time) and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Ton – any "short" ton (two thousand pounds (2,000 lb.)). For the purpose of determining compliance with the NO_x emissions limitations, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with this chapter, with any remaining fraction of a ton equal to or greater than five-tenths (0.5) ton being deemed to equal one (1) ton.

Comments on these proposed rules must be submitted, in writing, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* to Ms. Jessica Daniels, District Department of the Environment, Air Quality Division, 1200 First Street, NE, 5th Floor, Washington, D.C. 20002 or sent electronically to jessica.daniels@dc.gov. Copies of the proposed rule may be obtained between the hours of 9:00 a.m. and 5:00 p.m. at the address listed above for a small fee to cover the cost of reproduction or on-line at http://ddoe.dc.gov.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF PROPOSED RULEMAKING

Regulations to Implement the Lead Hazard Prevention and Elimination Act of 2008 and the Lead Hazard Prevention and Elimination Amendment Act of 2010

The Director of the District Department of the Environment (DDOE), pursuant to the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.01 *et seq*. (2008 Repl. & 2011 Supp.)), the Childhood Lead Screening Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-265; D.C. Official Code §7-871.03 (2011 Supp.)), the Transfer of Lead Poison Prevention Program to the District Department of the Environment Amendment Act of 2008, effective August 18, 2008 (D.C. Law 17-219; 55 DCR 7602 (July 18, 2008)), the Lead-Hazard Prevention and Elimination Act of 2008, effective March 31, 2009 (D.C. Law 17-381; D.C. Official Code § 8-231.01 *et seq.* (2011 Supp.)), Mayor's Order 2009-113, dated June 18, 2009, and the Lead Hazard Prevention and Elimination Amendment Act of 2010 ("2011 Amendments"), effective March 31, 2011 (D.C. Law 18-348; 58 DCR 717 (January 28, 2011)), collectively referred to as the "Acts", hereby gives notice of the intent to adopt the proposed rulemaking to add a new Chapter 33, entitled Regulation of Lead-Based Paint Activities, to Title 20 of the District of Columbia Municipal Regulations (DCMR). The federal regulations incorporated by reference in the rulemaking can be obtained in hard copy at the Office of the Federal Register (OFR), 800 North Capital St., NW, Ste. 700, Washington, DC 20001 or the Library Congress, 101 Independence Ave., SE, Washington, DC 20540, and electronically on the OFR or the U.S. Government Printing Office (GPO) websites. OFR's website address is www.ofr.gov and GPO's website address is http://www.gpoaccess.gov.

Lead is a powerful neurotoxin that can produce irreversible health effects for those who are exposed to it. Children less than six (6) years old and pregnant women are particularly at risk for harm caused by lead poisoning. Lead is prevalent in paint sold before 1978, the year that the Consumer Product Safety Commission banned its use for residential purposes. Nearly ninety percent (90%) of the District of Columbia's housing stock was built prior to 1978. The federal government considers the District a high-risk jurisdiction with respect to the likelihood of lead paint's presence in residential housing.

It is generally acknowledged that lead safety can be increased by property owners maintaining paint in intact condition, and by ensuring that contractors and others who disturb paint in or on pre-1978 structures use lead-safe work practices, thereby preventing lead-based paint hazards from being generated. The proposed regulations establish the legal landscape that promotes these desired outcomes.

I. Summary of the Proposed Rules and the Acts

The proposed rules would allow DDOE to fulfill the intent of the Acts in a manner that is effective and protective of public health, without unduly burdening the regulated community. These proposed rules implement provisions of the Acts, which require all dwelling units,

common areas of multifamily properties, and all child-occupied facilities, constructed before 1978, to be maintained free of lead-based paint hazards.

The Acts require property owners to disclose the presence of any lead-based paint, or lead-based paint hazards "reasonably known to the owner," before a tenant or purchaser may be obligated on a lease or contract of sale. Owners must also disclose if there is any action pending against the owner with respect to enforcement of the Acts. Under certain circumstances, in tenant households that include a child under the age of six (6) or a pregnant woman, either as a member of the household or as a regular visitor to the home, the owner is required to provide the tenant with a clearance report that confirms lead safety.

The proposed rules and the Acts mandate that lead-safe work practices be followed when any worker is involved in eliminating lead-based paint hazards from any pre-1978 structure. The proposed rules require different clearance procedures based upon the specific circumstances triggering the lead hazard elimination activities.

The Acts and §3307 of the proposed rules implement the procedures governing access by DDOE personnel, landlords, and their agents to properties under the Acts. DDOE has the authority to inspect property reasonably believed to be subject to the Acts.

The Acts establish certain basic certification requirements for each of the particular disciplines that perform lead-based paint activities. DDOE proposes additional criteria and procedures for certification in §3314. The proposed rules continue the current requirement that an abatement permit be obtained before performing abatement, but also establishes several discrete exceptions to those requirements.

DDOE may enforce the law through issuance of a Notice of Violation, an order requiring the owner to perform specific measures for elimination of any identified lead-based paint hazards and underlying conditions, or any other action necessary to protect the health and safety of the property occupants, including relocation. The proposed rules further define the instances in which the District government can seek reimbursement for the costs of taking any action when the owner has failed to comply with DDOE directives. Reimbursement for costs is in addition to any fines or other penalties that may be imposed on the owner.

II. Conforming amendment to Childhood Lead Screening Regulations

At the end of this rulemaking document are two (2) proposed amendments to the regulations governing the Childhood Lead Poisoning Prevention Program, which are located in chapter 73 of subtitle B of title 22 of the DCMR. The D.C. Council transferred the Childhood Lead Poisoning Prevention Program, formerly with the Department of Health, to DDOE in 2008. These amendments to the screening rules would make the rules consistent with D.C. Law 16-265, the "Childhood Lead Screening Amendment Act of 2006", effective March 14, 2007 (D.C. Official Code §7-871.03 (2011 Supp.)). Consistent with current standard practices nationwide, the second proposed amendment to the screening rules would limit the method by which laboratories are required to report blood lead data to the Childhood Lead Poisoning Prevention Program.

III. Discussion and Request for Comments on Specific Sections of the Proposed Rules

A. Scope of Abatement Permit Requirement

Abatement is a lead-based paint activity that triggers the Acts' requirement that a permit be obtained before any hazard mitigation work can begin. S*ee* D.C. Official Code §8-231.3(d)(1)(B) (2011 Supp.). Under proposed rule § 3305.1, DDOE would require a permit before a lead-based paint hazard abatement activity is performed on any structure, not just residential housing and child-occupied facilities. DDOE believes this is justified because abatement activities pose equally hazardous risks of toxic exposure to lead whether they are performed in residential housing or in commercial or other non-residential settings. *See* D.C. Official Code §8-231.11(d) (2011 Supp.). To avoid this risk of public exposure, such activities may only be conducted under carefully controlled and monitored conditions, by individuals who have been trained on how to work with lead-based paint, which can best be accomplished by requiring an abatement permit to be issued. An illustrative example might consist of a children's clothing store where a lead abatement takes place. A permit issued before beginning work will ensure that appropriately certified personnel will be involved, and that this work will not generate clouds of lead dust for customers to inhale, nor leave behind toxic levels of lead dust on countertops, windowsills, furniture, and floors.

DDOE is also proposing a set of narrow exceptions to the lead abatement permit requirement (*see* §3305.2(b)). The exceptions consist of (1) comprehensive window replacements; (2) simple door replacements; and (3) the covering of any lead-contaminated soil that contains less than one thousand parts per million (1000 ppm) of lead. As explained below, DDOE does not believe it is productive to have these activities fall within the scope of "abatement" activities; therefore, neither an abatement permit nor use of a certified abatement worker or supervisor would be required. DDOE's rationale is as follows:

- Requiring an abatement permit before replacement of a window or a door means that a certified lead abatement worker or supervisor would be required each time a contractor removes an old painted door off its hinges or replaces a deteriorating painted window. These activities do not require such burdensome regulation, which would also be neither administratively feasible nor enforceable. However, DDOE recognizes that these activities, if not properly carried out, can generate or leave behind significant lead-based paint hazards. Accordingly, DDOE proposes to require that these work areas pass a clearance examination at the conclusion of the job, thus ensuring that no lead-based paint hazards remain after the work is done.

- Covering relatively lightly-contaminated soil is also not an activity that should trigger an abatement permit, which would require the use of a certified abatement worker or supervisor. Again, a performance-based approach seems preferable, which in this case consists of a requirement for a clearance examination to confirm that the contaminated soil has been covered by at least six inches (6 in.) of clean soil or other appropriate ground cover.

The proposed rules would further clarify the term "abatement." In proposed §3305.2(c), DDOE states that "demolition activities involving painted surfaces within or on a pre-1978 structure are abatement activities that shall trigger the permit requirements in §3305.1." Demolition is at least as hazardous with respect to the propensity for spreading lead and for causing dangerous exposures for workers and neighbors, as are other activities that are traditionally recognized as abatement measures. DDOE requests public comment specifically on the rationale for this subsection of the proposed rules.

Proposed regulation §3311.5 clarifies the definition provided in the Acts of a "lead-free unit." According to the definition, to qualify as a lead-free unit, exterior surfaces "appurtenant to the unit" must not contain any lead-based paint, and "the approaches" to the unit must "remain lead-safe." The Acts' definition of a "lead-free unit" goes on to specify that "the method to ensure that approaches to lead-free units remain lead-safe" may be established by regulation. Proposed regulation §3311.5 does just that, clarifying with respect to exterior surfaces what "appurtenant to the unit" means, and detailing the method to ensure approaches remain lead-safe. DDOE requests the public's views on these provisions and invites alternative proposals for agency consideration.

B. Clearance Requirements

DDOE proposes applying different clearance requirements based upon the specific circumstances of the work to eliminate a lead-based paint hazard and any underlying conditions. DDOE does not consider it necessary to have an in-depth clearance examination and report, for example, when a single door is taken off its hinges, as would be necessary after abatement activities undertaken in several rooms in a residence, in response to a Notice and Order against the owner issued by the government. As proposed here, several different sets of clearance requirements would apply to differing circumstances defined in the rules. DDOE specifically requests the public's comments on the following subsections:

Proposed §3302.7 would establish the clearance requirements that apply when DDOE issues a Notice of Violation and Order to Eliminate Lead-Based Paint Hazards (Notice and Order) to any person or entity.

Proposed §3305.6 would establish the clearance requirements that apply when an abatement permit has been issued, but no Notice of Violation or Order has been issued by DDOE.

Proposed §3306.2 would establish the clearance requirements that apply when a renovation permit has been issued, or when work that is described under §3305.2(b) has been conducted, or when any other clearance examination is required pursuant to 40 CFR §745.85 ().

Proposed §3311.6 contains different clearance requirements that would apply at the time that there is a turnover of property, for which the Acts require a clearance report.

C. DDOE Certification of Individuals and Entities

DDOE is also specifically requesting comments on the proposed prerequisites for DDOE certification of the following: a risk assessor (proposed §3314.10), an abatement supervisor (proposed §3314.11), and a lead project designer (proposed §3314.12). DDOE requests input on whether these proposed provisions are appropriate to ensure individuals who apply for certification for these disciplines have the background and experience necessary to do the work.

D. Sufficiency and Appropriateness of Renovation, Repair and Painting Rule Requirements

Pursuant to 40 CFR §§ 745.320, 745.324, 745.326 and 745.327, DDOE will be seeking authorization from the U.S. Environmental Protection Agency (EPA) to implement a District of Columbia Renovation, Repair and Painting (RRP) program. This cannot occur without the legal underpinnings of an RRP program in place to be implemented by the District. Accordingly, §3306 and §§ 3314 – 3323 of these proposed rules would establish the regulatory structure for a District of Columbia RRP program.

For the most part, the proposed rules mirror the federal RRP requirements, for example, with respect to the pre-renovation education requirements under §3306.9. However, DDOE proposes to establish more stringent requirements for some aspects of its own RRP program than what is currently required by the EPA. These consist of the following:

1. A renovation permitting program for projects involving: (a) the disturbance of more than five hundred square feet (500 ft.²) of painted surface, unless documentation proves the coating is not lead-based paint; or (b) a contract for renovation that would affect painted surfaces, in an amount equal to or exceeding twenty thousand dollars ($20,000). This component is detailed in §3306.1. Establishing such a permit program would allow DDOE to keep track of major RRP-related jobs and ensure they are properly being carried out. These larger jobs carry a proportionately greater risk of generating significant lead-based paint hazards.

2. Under the proposed rules, a clearance examination would be required upon completion of any renovation work large enough to trigger a renovation permit. The proposed renovation clearance requirements are detailed in §3306.2. Because these larger jobs carry a proportionately greater risk of generating significant lead-based paint hazards, DDOE believes that passing a clearance examination upon completion of the work is an important safeguard in these cases.

3. While EPA's RRP Rule sets a *de minimis* standard of six square feet (6 ft.²) of paint being disturbed on interior surfaces as the threshold for determining whether RRP regulations apply, existing and long-standing United States Department of Housing and Urban and Development (HUD) lead regulations have established a *de minimis* standard of two square feet (2 ft.²) for the use of lead-safe work practices. DDOE has decided to apply this more stringent standard to its proposed RRP regulations in order to eliminate potential confusion about which standard applies and when. This proposed provision is found at §3320.1(b).

Comments are requested on each of these three proposed changes to EPA's RRP Rule. Comments are further requested identifying any elements necessary to administer an RRP program in the District of Columbia that either may be missing altogether from these proposed rules, or may be less stringent than their respective counterpart corresponding EPA regulation.

TITLE 20 DCMR (ENVIRONMENT) is amended as follows:

CHAPTER 8 (ASBESTOS, SULFUR , NITROGEN OXIDES AND LEAD) is amended by repealing section 806 (control of lead).

A new CHAPTER 33 (REGULATION OF LEAD-BASED PAINT ACTIVITIES) is added to read as follows:

3300 GENERAL

3300.1 This chapter governs lead-based paint hazard elimination and prevention activities in the District of Columbia and implements the Lead Hazard Prevention and Elimination Act of 2008 and the Lead Hazard Prevention and Elimination Amendment Act of 2010 ("the Acts").

3300.2 The Acts and these regulations require owners of the following structures in the District of Columbia built before 1978 to be maintained free of "lead-based paint hazards":

(a) Residential dwelling units, including those in multifamily properties;

(b) Common areas of multifamily properties; and

(c) Child-occupied facilities for children under the age of six (6) years, such as daycare centers, preschool programs, or kindergarten classrooms.

3301 PRESUMPTION OF LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS

3301.1 Dwelling units, common and exterior areas of multifamily properties, and child-occupied facilities are presumed to contain lead-based paint, if constructed prior to 1978, and any paint that is deteriorated, chipping, peeling, or otherwise not in intact condition is considered to be a lead-based paint hazard, and is prohibited.

3301.2 This presumption may be rebutted by documentation prepared by a lead-based paint inspector or risk assessor that the paint in question is not lead-based paint.

3301.3 The presence of loose or peeling paint in residential premises constructed prior to 1978, which constitutes a lead-based paint hazard if no documentation is produced proving it is not lead-based paint, shall trigger enforcement action.

3302 NOTICE OF VIOLATION AND ORDER TO ELIMINATE LEAD-BASED PAINT HAZARDS

3302.1 The District Department of the Environment (DDOE) may take steps to determine the existence of a lead-based paint hazard whenever DDOE has reason to believe that there is a risk that a lead-based paint hazard is present in a dwelling unit, or in a common area of a multifamily property, or child-occupied facility, such as a day care center or kindergarten program that is regularly attended by children under the age of six (6) years.

3302.2 To determine whether a lead-based paint hazard is present, DDOE's investigation of a dwelling unit, common and exterior areas, or a child-occupied facility pursuant to §3302.1 may include a:

(a) Risk assessment;

(b) Lead inspection;

(c) Clearance examination; and

(d) Visual inspection.

3302.3 If a lead-based paint hazard is identified, DDOE may issue a written Notice of Violation and an Order to Eliminate Lead-Based Paint Hazards, to the property owner or to any other person. A Notice and Order shall:

(a) Identify the violation;

(b) Specify the measures needed to correct the violation, including the time for compliance; and

(c) Order any other action necessary to protect the health and safety of the occupants, including relocation pursuant to §3309, if necessary.

3302.4 An individual or entity who has been served a Notice and Order may file an objection, by submitting a written statement of the grounds for the objection, to the Director within fifteen (15) calendar days of the date of the Notice and Order.

3302.5 If DDOE orders the owner to eliminate a hazard by lead-based paint hazard abatement, the owner shall:

(a) Comply with the DDOE Order within thirty (30) calendar days, unless extended for good cause pursuant to §3302.9;

(b) Obtain a permit pursuant to §3305 before beginning abatement work;

(c) Ensure that each person performing an abatement activity:

(1) Is certified as required by these rules; and

(2) Adheres to the lead-safe work practice requirements under §3319 while performing the work; and

(d) Submit a copy of the clearance report to DDOE and, in the case of rental housing, a copy to the tenant, that:

(1) Has been prepared by a risk assessor, subject to the conditions in D.C. Official Code §8-231.11(f)(1) (2011 Supp.);

(2) Is submitted to DDOE and to any affected tenant within five (5) business days of its issuance by said risk assessor; and

(3) Complies with the clearance report requirements established under §3302.7.

3302.6 If DDOE allows the owner to apply interim controls because abatement is not deemed essential to eliminate a hazard given the particular circumstances, the owner shall:

(a) Comply with the DDOE Order within thirty (30) calendar days, unless extended for good cause pursuant to §3302.9;

(b) Ensure that each person working to eliminate the lead-based paint hazard:

(1) Is certified as required by these rules; or

(2) Has been trained in the lead-safe work practices established under §3319; and

(3) Adheres to those lead-safe work practices while performing the work;

(c) Comply with the rules for application of interim controls under §3304; and

(d) Submit a passing clearance report to DDOE, and in the case of rental housing, to the tenant, that:

(1) Has been prepared by a risk assessor, subject to the conditions in D.C. Official Code §8-231.11(f)(1) (2011 Supp.), except as otherwise provided in §3305.4;

(2) Is submitted to DDOE and to any affected tenant within five (5) business days of its issuance by the risk assessor; and

(3) Complies with the clearance report requirements under §3302.7 and, as applicable, under §3304.4.

3302.7 If DDOE has issued an Order to Eliminate Lead-Based Paint Hazards, the clearance examination shall be performed as follows:

(a) The clearance examination shall include the following:

(1) A visual inspection of each work area, to ensure paint is in intact condition and to ensure any underlying condition contributing to paint failure that was identified in the Notice of Violation has been repaired;

(2) Photos to document that each work area where non-intact paint conditions had been identified in the Notice and Order have been made intact;

(3) A visual inspection of each work area, to ensure there is no visible dust or debris;

(4) Dust sampling in each room that contains a work area, and if fewer than four (4) rooms contain a work area, in additional rooms until at least four (4) rooms are sampled, that shall include either a child's bedroom, a children's play room, a living room, the bathroom used by the child, or the kitchen, on the following surfaces in each sampled room:

(A) A floor sample; and

(B) A window sill or a window well sample from rooms that contain a window;

(5) A floor dust sample within two feet (2 ft.) of the front door and a floor dust sample within two feet (2 ft.) of the rear door;

(6) Whenever a work area is located on the exterior of a property, and whenever a work area involves a window or a door that opens to the exterior of a property, a dust sample on any concrete or other rough exterior horizontal surface within two feet (2 ft.) of such work area(s);

(7) If in a multifamily property:

(A) Additional floor dust samples outside the unit within two feet (2 ft.) of the front door and within two feet (2 ft.) of the rear door of each unit where lead-based paint hazard elimination work occurred; and

(B) Additional floor dust samples inside the building, within two feet (2 ft.) of each of the property's entrance and exit doors;

(8) Soil sampling if lead-contaminated bare soil was identified, or if exterior work to eliminate a lead-based paint hazard was performed within ten feet (10 ft.) of a bare soil area;

(b) Before proceeding with the clearance examination, the risk assessor performing the clearance examination shall review the following documents to establish the extent and scope of the lead hazard elimination work, and any other pertinent requirements:

(1) Abatement Permit;

(2) Lead-based Paint Inspection Survey, or Risk Assessment Report;

(3) Project Scope of Work; and

(4) Notice of Violation and Order to Eliminate Lead-Based Paint Hazards;

(c) If the clearance examination results in a failed clearance report, the owner shall be responsible for correcting whatever caused the failed clearance examination until a clearance examination results in a passed clearance report;

(d) All environmental samples taken during a clearance examination shall be analyzed by an appropriately accredited lab and shall include as a quality assurance measure one (1) blank sample for lab analysis for each property subject to a clearance examination and one (1) prepared spike sample for lab analysis for every twenty (20) environmental samples taken; and

(e) Each clearance report, whether passing or failing, shall include:

(1) A list of the documents reviewed pursuant to §3302.7(b);

(2) A room by room narrative that provides details about what specific steps were taken during the clearance examination, and the result of each such step;

(3) Photos taken pursuant to §3302.7(a)(2), with a caption for each photo, describing the location depicted;

(4) Analytical result for each environmental sample submitted for lab analysis, including any blank or spike sample submitted, including the lead concentration in the prepared spike;

(5) A chain of custody sheet that lists each environmental sample submitted to a lab for analysis;

(6) A floor plan of the unit or property that displays where each environmental sample was taken, including the location of any soil sampling;

(7) The reason or reasons why the unit or property did not pass the clearance examination, if applicable;

(8) The date of the clearance examination;

(9) The signature of the individual who performed the clearance examination, along with his or her DDOE certification identification number; and

(10) The date the clearance report was sent or provided to the property owner.

3302.8 A clearance examination following elimination of a lead-based paint hazard ordered by the District, or after such work is performed in response to a child with an elevated blood lead level, shall not be conducted by:

(a) A risk assessor or lead-based paint inspector who is related to the owner or any tenant by blood or marriage;

(b) A risk assessor or lead-based paint inspector who is an employee or owner of the abatement firm performing the work;

(c) A risk assessor or lead-based paint inspector who is an employee or owner of an entity in which the abatement firm has a financial interest; or

(d) A dust sampling technician.

3302.9 The deadline specified in §§ 3302.5 and 3302.6 may be extended by DDOE, provided the owner:

(a) Requests an extension in writing to DDOE and submits such written request no fewer than five (5) calendar days prior to the existing deadline for compliance;

(b) Explains in the written deadline extension request the reason why more time is needed; and

(c) Provides in the written deadline extension request a summary of steps taken to date, sufficient to demonstrate to the satisfaction of DDOE that:

(1) The owner intends in good faith to comply with the Order; and

(2) Providing more time to the owner to comply with the Order is not likely to endanger the health and safety of any occupants of the property subject to said Order.

3303 DDOE ENFORCEMENT ACTIONS AND COST REIMBURSEMENT

3303.1 If an individual or business entity fails to comply with a Notice and Order issued by DDOE within the time required pursuant to this chapter or to comply with other time requirements of the Acts, and such failure is likely to result in a significant risk of harm to either human health or the environment, DDOE may take whatever steps it deems reasonable to prevent such harm from occurring and may require reimbursement for all reasonable costs.

3303.2 DDOE may institute an enforcement action for injunctive relief, damages, or civil penalties for violations of this chapter or the Acts, or for recovery of any corrective action costs incurred by the District government pursuant to D.C. Official Code §8-231.05 (2011 Supp.).

3303.3 Civil fines, penalties, and fees may be imposed for any infraction of the provisions of the Acts, or the rules or regulations issued under the authority of the Acts, pursuant to the procedures implementing Titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, 16 DCMR Chapter 31.

3304 RISK REDUCTION USING INTERIM CONTROLS

3304.1 Before any individual performs interim controls to eliminate lead-based paint hazards in the District of Columbia such person shall be certified in lead-safe work practices as required by §3319 and D.C. Official Code §8-231.03(d)(1)(C)(ii) (2011 Supp.).

3304.2 A certificate of completion from an EPA or D.C. accredited training provider or from another EPA authorized, state-accredited training provider shall serve as proof of receipt of the lead-safe work practices training required by these regulations. An individual shall provide proof of training in lead-safe work practices upon request by DDOE at the job site. A business entity shall ensure that its workers comply with these standards.

3304.3 Documentation proving Certified Renovator status, or valid Abatement Worker or Abatement Supervisor certification status, shall satisfy the requirements of §§ 3304.1 and 3304.2, provided such documentation is from an EPA or D.C. accredited training provider or from another EPA-authorized, state-accredited training provider.

3304.4 Whenever non-abatement activities are conducted to address lead-based paint hazards pursuant to an Order to Eliminate Lead-Based Paint Hazards, a passing clearance report shall be required:

(a) Upon completion of such interim controls, and again between thirty (30) and thirty-six (36) months after completion of the interim controls activities; or

(b) Upon completion of such interim controls, and again within such timeframe that is specified by DDOE in the Order, which may include potentially multiple required Clearance Report submittal timeframes over time.

3304.5 An initial passing clearance report pertaining to the elimination of lead-based paint hazards identified in an Order issued by DDOE shall be issued only by a risk assessor. Any subsequent Clearance Report may be issued by either a risk assessor, a lead-based paint inspector, or a dust sampling technician.

3304.6 A copy of each passing Clearance Report shall be submitted to DDOE's Lead and Healthy Housing Division by the property owner, within five (5) business days of its issuance, either in PDF format via electronic mail, or by mail or a courier service, or in person.

3305 LEAD-BASED PAINT HAZARD ABATEMENT REQUIREMENTS

3305.1 An individual or business entity shall not commence or perform any abatement activity involving lead-based paint hazards on any structure without first applying for and receiving an abatement permit from DDOE, except as provided in §3305.2(a).

3305.2 An abatement activity consists of any measure or set of measures that eliminates a lead-based paint hazard, including presumed lead-based paint in non-intact condition, through such steps as paint stripping, component removal, the enclosure or encapsulation of lead-based paint, and the removal or covering of lead-contaminated soil.

(a) The following activities are exceptions to §3305.1, and shall at minimum require the use of individuals trained in lead-safe work practices as described in §3319, as documented by proof available at the work site of either Certified Renovator status or valid Abatement Worker or Abatement Supervisor certification status, and which shall, in the case of subparagraphs (1) and (2) below, be followed by a clearance examination pursuant to §3306.2(b):

(1) Comprehensive window replacement, provided it includes all window components, including casing, jamb, stops, sill and apron;

(2) Simple door replacement, provided it does not include replacing ancillary door components, such as the casing, the door stop, the jamb, or the threshold; and

(3) Covering of any lead-contaminated soil that contains less than one thousand parts per million (1,000 ppm) of lead;

(b) Demolition activities involving painted surfaces within or on a pre-1978 structure are abatement activities that shall trigger the permit requirements in §3305.1;

(c) Performance of encapsulation shall be limited to those products that have been subjected to nationally recognized third-party testing that documents that the product in question, when applied in accordance with its instructions, shall form an effective barrier for no fewer than twenty (20) years; and

(d) Encapsulation shall not be used as a technique to eliminate lead-based paint hazards on friction or impact surfaces, when such hazards have been identified as part of a Notice and Order.

3305.3 An abatement permit may be granted if the applicant submits all of the following to DDOE:

(a) A completed Lead-Based Paint Hazard Abatement Permit Application;

(b) A copy of the applicant's signed contract for the work, including the charges for all lead abatement activities under the contract and the signature of each party to the contract;

(c) A copy of the applicant's Scope of Work, describing the lead abatement activities that the applicant is under contract to perform;

(d) A copy of a risk assessment or lead inspection report, or other data source that identifies the exact location of the lead-based paint and lead-based paint hazards to be abated;

(e) A copy of a Certificate of Liability Insurance, proving the applicant's current policy coverage for at least one million dollars ($1,000,000) for individual environmental or lead claims;

(f) A copy of current D.C. lead certifications for each person who will engage in any of the abatement activities, including a copy of the work site supervisor's certification, as well as a copy of the business entity certification;

(g) A completed D.C. Clean Hands Self-Certification Form;

(h) A copy of a valid District of Columbia Department of Consumer and Regulatory Affairs (DCRA) license to do business in the District; and

(i) Any other information DDOE requires in its permit application instructions as relevant to issuance of an abatement permit.

3305.4 DDOE may specify the requirements that apply to work carried out under the permit by describing them on the permit.

3305.5 Except as provided pursuant to §3305.2(a), abatement shall only be performed by an individual or entity that is currently certified by the District of Columbia as a lead abatement worker or supervisor.

3305.6 The issuance of an abatement permit triggers a requirement that the individual or business entity to whom the permit was issued submit to DDOE a passing clearance report upon completion of the abatement activities to close out the permit as follows:

(a) A clearance examination shall be performed no sooner than one (1) hour and no later than three (3) business days after the completion of the abatement activities, and shall be repeated until a passing clearance report is issued;

(b) If there is no Order to Eliminate Lead-Based Paint Hazards, the clearance examination may be performed by a lead-based paint inspector or by a risk assessor;

(c) If there is no Order to Eliminate Lead-Based Paint Hazards, the clearance examination shall consist of:

(1) A visual inspection of each work area, to ensure paint is in intact condition;

(2) A visual inspection of each work area, to ensure there is no visible dust or debris;

(3) Dust sampling in each room that contains a work area, on the following surfaces in each sampled room:

(A) One (1) floor sample; and

(B) For rooms that contain a window, one (1) window sill or one (1) window well sample;

(4) Whenever a work area is located on the exterior of a property, and whenever a work area involves a window or a door that opens to the exterior of a property, a dust sample on any concrete or other rough exterior horizontal surface within two feet (2 ft.) of such work area(s); and

(5) Soil sampling if any abatement activity included lead-contaminated bare soil remediation, or if exterior work to eliminate a lead-based paint hazard was performed within ten feet (10 ft.) of a bare soil area;

(d) Each environmental sample taken during a clearance examination shall be analyzed by an appropriately accredited lab and shall include as a quality assurance measure one (1) blank sample for lab analysis for each property subject to the clearance examination, and one (1) prepared spike sample for lab analysis for every twenty (20) environmental samples taken; and

(e) A passing clearance report that is issued in the absence of an Order to Eliminate Lead-Based Paint Hazards shall be submitted to DDOE within ten (10) business days of its issuance, by the individual or business entity to whom the DDOE abatement permit was issued.

3306 RENOVATION REQUIREMENTS

3306.1 An individual or business entity that performs renovation of a residential property or a child-occupied facility built prior to 1978 and who is compensated for those services, shall obtain a renovation permit from DDOE, if:

(a) The activities contracted for include the removal, paint stripping, or other modification of surfaces or building components coated with presumed lead-based paint in intact condition, the repair, repainting, or modification of surfaces or building components coated with presumed lead-based paint in non-intact condition, or weatherization projects that disturb surfaces or building components coated with presumed lead-based paint, the sum total of which activities disturbs more than five hundred square feet (500 ft.^{2}) of painted surface, unless documentation in the individual or business entity's possession proves that the coating is not lead-based paint; or

(b) The contract for the renovation work contains a total charged cost of twenty thousand dollars ($20,000) or more for the activities enumerated in §3306.1(a).

3306.2 A clearance examination shall be performed after the work has been done that required a renovation permit, and after any comprehensive window replacement or simple door replacement has occurred in accordance with §§ 3305.2(a)(1) or (2):

(a) A clearance examination triggered pursuant to this section, to §3305.2(b), or to any provision under 40 CFR §745.85 shall consist of dust sampling in each room that contains a work area, on the following surfaces in each sampled room:

(1) One (1) floor sample; and

(2) For rooms that contain a window, one (1) window sill or one (1) window well sample;

(b) For work that involves comprehensive window replacement or simple door replacement in accordance with §§ 3305.2(a)(1) or (2), the floor samples shall be taken within two feet (2 ft.) of any such doors or windows;

(c) Whenever a work area is located on the exterior of a property, and whenever a work area involves a window or a door that opens to the exterior of a property, a dust sample shall be taken on any concrete or other rough exterior horizontal surface within two feet (2 ft.) of such work area(s);

(d) A clearance examination performed after covering of soil pursuant to §3305.2(a)(3) shall consist of a determination by the lead inspector or risk assessor conducting the clearance examination as to whether the lead-contaminated soil was uniformly covered by at least six inches (6 in.) of clean soil or other appropriate ground cover, and a description in the clearance report of the methodology used by said inspector or risk assessor to make this determination; and

(e) A clearance examination shall be performed no sooner than one (1) hour and no later than three (3) business days after the completion of the permit or other activities listed in §§ 3305.2(a) and (b).

3306.3 The clearance examination shall be conducted by a lead-based paint inspector or risk assessor, or, except in clearance cases involving soil clearance, by a dust sampling technician.

3306.4 A clearance report produced under this section shall be filed with DDOE's Lead and Healthy Housing Division within ten (10) business days following the clearance examination.

3306.5 All work that constitutes renovation work pursuant to 40 CFR §§ 745.80 *et seq*. and that does not trigger a permit requirement under these regulations shall be conducted in accordance with the rules promulgated by EPA under 40 CFR §745.85(a) and shall be followed by cleaning verification in accordance with the rules promulgated by EPA under 40 CFR §745.85(b).

3306.6 A renovation permit may be granted if the applicant submits all of the following to DDOE:

(a) A completed Renovation Permit Application Form;

(b) A copy of the applicant's signed contract for the work, including the charges for all renovation activities under the contract;

(c) A copy of the applicant's Scope of Work, detailing the renovation activities applicant is under contract to perform, or if identical to the language in the signed contract produced under §3306.6(b), a statement to that effect;

(d) A copy of a valid DCRA Basic Business License to do business in the District; and

(e) Any other information DDOE requires in its permit application instructions that is relevant to issuance of a renovation permit.

3306.7 DDOE may specify the requirements that apply to work carried out under the permit by describing them on the permit.

3306.8 The use of lead-safe work practices as set out in § 3319 and the prohibited practices set out in § 3321 apply to renovation work.

3306.9 Prior to any renovation activity occurring for compensation in a residential property or in a child-occupied facility, where the structure was built prior to 1978, pre-renovation education and documentation thereof shall occur, consisting of:

(a) At least five (5) business days prior to beginning any renovation activity, the contractor shall provide the EPA pamphlet entitled *"Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools"* to:

(1) The owner of the residential property or child-occupied facility;

(2) Any affected tenant of the property or facility;

(3) The administrator of the child-occupied facility; and

(4) The parent or guardian of any child under the age of six (6) years who attends the child-occupied facility on a regular basis; and

(b) The contractor shall retain documentation that compliance with §3306.9(a) has occurred, and shall make such documentation available to DDOE upon request for up to six (6) years.

3307 ACCESS TO PROPERTIES

3307.1 DDOE may enter a residence or child-occupied facility between the hours of 7:30 a.m. and 7:30 p.m. if DDOE reasonably believes that activities are being or have been conducted in violation of the Acts or any of these regulations, or upon reasonable belief that there is an imminent threat to the health and safety of the occupants.

3307.2 Consent to enter is required before entry by DDOE, unless the DDOE has obtained an administrative warrant. Search warrants authorizing entry for inspections are issued by the Superior Court pursuant to D.C. Official Code §11-941 (2001).

3307.3 A property owner or the owner's employee or representative, seeking access at reasonable times to a residential rental dwelling unit to comply with the requirements of this chapter shall provide written notice to the tenant of the need for access, at least forty-eight (48) hours before the proposed date of access.

3307.4 An owner shall document that the tenant grants or denies access on the planned date, by asking the tenant to sign a form and return it to the owner. If the tenant denies the owner's request, the tenant may:

(a) Propose an alternative date of access, and

(b) List any condition for granting access.

3307.5 Except as provided in §3307.7, a property owner who complies with the conditions proposed by the tenant in accordance with §§ 3307.4(a) and (b) and whose tenant still refuses to grant access to the dwelling unit shall be exempt from meeting the requirements of the Acts that are relevant to the requested access, until the tenant either provides written notice of the tenant's willingness to grant access or otherwise freely grants access, or until the tenant no longer occupies the unit, whichever happens first.

3307.6 A property owner shall meet the tenant's conditions for access under §3307.4(a) and (b) if upon review, DDOE determines that such conditions are reasonable.

3307.7 A property owner shall verify that workers engaging in lead-based paint activities on the owner's behalf are trained or certified pursuant to these regulations.

3308 CEASE AND DESIST AND OTHER ORDERS

3308.1 DDOE may issue a Cease and Desist Order to take effect immediately, in order to require an individual or a business entity to correct a condition which is an imminent and substantial danger to the public health or welfare or to restrain an individual or a business entity from engaging in any unauthorized activity that immediately and substantially endangers the public health or welfare**.** A Cease and Desist Order shall:

(a) Describe the nature of the violation;

(b) Take effect at the time and on the date signed;

(c) Identify the actions to be taken or halted; and

(d) Include a statement advising the person that he or she has a right to request a hearing within fifteen (15) business days of service of the order upon him or her.

3308.2 A hearing request does not stay the effective date of the Cease and Desist Order. If a hearing is not requested within that time-period, the order becomes final.

3308.3 DDOE may issue any other order necessary to protect the public health or welfare and the environment.

3309 REQUIREMENTS FOR TEMPORARY RELOCATION OF TENANTS

3309.1 A property owner shall take all steps necessary to provide temporary comparable alternative living arrangements for an affected tenant whenever DDOE requires relocation of the tenant due to the presence of lead-based paint hazards at a residential rental property, and shall:

(a) Provide the tenant with at least fourteen (14) days of written notice about the specifics of the proposed relocation, including contact information and the address of the temporary unit, unless a shorter time period is ordered by DDOE, or is mutually agreed to in writing by the owner and the tenant;

(b) Provide the tenant with a written, signed statement that the tenant has the right to return to the unit once the unit has passed a clearance examination, under the same terms of agreement that exist under the current tenancy;

(c) Determine whether there are any appropriate temporary relocation units that do not contain any lead-based paint hazards and that are located within the same property in which the tenant currently resides, and offer same to the tenant;

(d) Determine whether there are any appropriate temporary relocation units available within the same school district or ward and that are close to public transportation, and offer same to the tenant if a unit as described in paragraph (c) above is not available; or

(e) Offer the tenant other reasonably located, appropriate, and available temporary relocation units if no such unit described in paragraphs (c) or (d) is available.

3309.2 A property owner who is ordered to relocate a tenant shall pay all reasonable temporary relocation expenses that may be required until the tenant's dwelling unit has passed a clearance examination, and a reasonable amount of time has passed to allow the tenant to return to the dwelling unit, which shall include:

(a) Moving and hauling expenses;

(b) Payment of a security deposit;

(c) The cost of replacement housing, including alternative arrangements identified by the tenant and agreed to by said property owner, if the owner has no available temporary relocation unit that satisfies §3309.1(e), provided that the tenant continues to pay the rent on the dwelling unit from which the tenant has been relocated; and

(d) Installation and connection of utilities and appliances.

3309.3 The property owner shall exercise due diligence in making all reasonable efforts to minimize the duration of temporary relocations.

3309.4 The property owner shall comply with all relocation requirements within fourteen (14) calendar days of the receipt of a written order from DDOE requiring temporary relocation of a tenant, unless the order specifies a different deadline for such measures.

3309.5 A tenant may elect to make alternative arrangements for temporary relocation without any interference from a property owner.

3309.6 Whenever DDOE determines that an imminent threat to a tenant's health and safety exists due to the presence of lead-based paint hazards, DDOE may initiate tenant relocation to a hotel or make other temporary arrangements for lead safety for the tenant, in advance of the owner receiving a DDOE Order to Relocate, or prior to the deadline to which the owner is subject pursuant to §3309.1.

3309.7 If DDOE incurs expenses when it takes action pursuant to §3309.6, the property owner shall reimburse DDOE.

3310 DISCLOSURE REQUIREMENTS AND TENANT RIGHTS FORM

3310.1 The owner of a dwelling unit constructed before 1978 shall disclose to the purchaser or tenant of the dwelling unit information reasonably known to the owner about the presence of any of the following conditions in the unit:

(a) Lead-based paint;

(b) Lead-based paint hazards; and

(c) Pending actions ordered by the Mayor pursuant to the Acts.

3310.2 The disclosures shall be provided on the lead-disclosure form provided by the Mayor, and shall be provided before the purchaser or tenant is obligated under any contract to purchase or lease the dwelling unit.

3310.3 The owner of a dwelling unit constructed before 1978, which unit will be occupied or regularly visited by a child under the age of six (6) years or by a pregnant woman, shall provide to the tenant an accurately and fully completed lead-disclosure form and a clearance report issued within the previous twelve (12)

months. The disclosures required by this subsection shall be disclosed before the tenant is obligated under any contract to lease the dwelling unit.

3310.4 If a tenant of a dwelling unit constructed before 1978, in which unit a person at risk resides or regularly visits, notifies the owner of the property in writing that a person at risk resides in or regularly visits the dwelling unit, the owner of the dwelling unit shall provide to the tenant within thirty (30) days a clearance report issued within the previous twelve (12) months.

3310.5 In lieu of providing the disclosure form and clearance report required by §§ 3310.3 and 3310.4, an owner may provide to, or make the following available for review by, the tenant:

(a) A report from a risk assessor or inspector certifying that the dwelling unit is a lead-free unit; provided, that for the purposes of this subsection, the term "lead-free unit" shall mean the definition of lead-free unit in effect at the time of unit certification; or

(b) Three (3) clearance reports issued at least twelve (12) months apart and within the previous seven (7) years; provided, that the property was not, and is not, subject to any housing code violation that occurred during the past five (5) years or any that is outstanding.

3310.6 The owner of a dwelling unit shall provide notice to its tenants of their rights under the Acts on a form provided by DDOE whenever the tenants execute or renew a lease for the unit and whenever the owner provides notice of a rent increase.

3310.7 The owner of a dwelling unit, who learns of the presence of lead-based paint in a dwelling unit, shall:

(a) Notify the tenant of the presence of lead-based paint within ten (10) days after discovering its presence; and

(b) Provide the tenant with:

(1) The Lead Warning Statement described in 40 CFR §745.113; and

(2) The lead hazard information pamphlet described in the Residential Land-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §4852d (2006), provided, that the Lead Warning Statement and lead hazard information pamphlet need not be submitted if they have been given to the tenant within the prior twelve (12) months.

3310.8 An owner shall maintain copies of all lead-related reports for a property or any part thereof and make the reports available to tenants, tenants' agents, and government officials for review and photocopying at reasonable hours and at a location reasonably close to the property.

3311 CLEARANCE REQUIREMENTS AT CHANGE IN OCCUPANCY OF RENTAL UNITS

3311.1 Before a change in the occupancy of a residential rental unit and before the execution of a lease, where a prospective occupant includes a pregnant individual or a child under the age of six (6), the owner of the unit shall:

(a) Provide the prospective tenant with a passing clearance report, issued not more than twelve (12) months before the change in occupancy;

(b) Give the prospective tenant an acknowledgment form to sign and date as confirmation of receipt of the passing clearance report; and

(c) Retain a copy of the acknowledgement form for at least six (6) years, which shall be readily accessible to DDOE during that period.

3311.2 Upon written request by a tenant in a residential rental unit who is pregnant or has a child under the age of six (6) living at or regularly visiting the residence, the owner of said unit shall:

(a) Provide the occupant with a passing clearance report issued not more than twelve (12) months before the date of the request or more than thirty (30) calendar days after receipt of the written request;

(b) The owner shall ask the tenant to sign and date an acknowledgement of receipt of the passing clearance report; and

(c) The owner shall retain a copy of the acknowledgement form for at least six (6) years, which shall be accessible to DDOE during that period.

3311.3 The clearance report required by this section may be issued by a dust sampling technician, lead-based paint inspector, or risk assessor.

3311.4 An owner may satisfy the clearance report requirements of this section by submitting to the tenant:

(a) A report from a risk assessor or lead-based paint inspector certifying that the unit is a lead-free unit, in accordance with §3311.5; or

(b) Three (3) passing clearance reports issued at least twelve (12) months apart from each other by a dust sampling technician, lead-based paint inspector, or risk assessor, provided that the three (3) passing clearance reports were all issued within the previous seven (7) years and that the property owner or property manager is not currently, or was not during the previous five (5) years, subject to any housing code or any DDOE violation enforcement orders.

3311.5 To qualify as a "lead-free unit" in a multifamily property:

(a) The owner shall document that all representative interior unit painted surfaces and all representative exterior painted surfaces that can reasonably be considered as the unit's exterior surfaces have been tested by a lead-based paint inspector or risk assessor and do not contain lead-based paint;

(b) The owner shall document that any floor surface located within twenty (20) feet of the front or rear door has been tested by a dust sampling technician, lead-based paint inspector, or risk assessor and does not contain lead-contaminated dust; and

(c) The multifamily property must have an Operations and Maintenance Plan that is being fully implemented and that includes specific reference to a specialized cleaning process that ensures approaches to lead-free units remain lead safe over time.

3311.6 For purposes of this section, a passing clearance report shall include:

(a) The date that the clearance examination was conducted;

(b) A statement by the individual who conducted the clearance examination that the individual:

(1) Was granted unobstructed access to all painted areas in the unit;

(2) Did not see paint deterioration on any component or fixture on the interior of the unit;

(3) Did not see paint deterioration on any component or fixture on the exterior portion of a property that can reasonably be considered the unit's exterior surfaces in the case of multifamily property; and

(4) Did not see paint deterioration on any component or fixture on the exterior of any single-family property to which this section applies;

(c) Dust sampling results that pass the clearance requirements of this chapter, in accordance with the following dust sampling protocol:

(1) One (1) floor sample in each room;

(2) One (1) window sill or well sample in each room containing a window;

(3) An additional floor sample inside the unit, within two feet (2 ft.) of either the front door or the rear door; and, in the case of a single-family home that includes either a porch or steps leading to the front or back door; and

(4) A sample on the exterior of the property, on any concrete or other rough exterior horizontal surface within two feet (2 ft.) of the front and the back door, for a total of up to two (2) exterior samples;

(d) The analytical result for each environmental sample submitted for lab analysis, including any blank or spike sample submitted;

(e) A floor plan of the unit that displays where each environmental sample was taken;

(f) A chain of custody sheet that lists each environmental sample submitted to a lab for analysis; and

(g) The date of the clearance examination, along with the signature of the individual who conducted the clearance examination and that individual's D.C. certification identification number.

3311.7 Each environmental sample taken pursuant to this section shall be submitted for analysis to an appropriately accredited lab and shall include, as quality assurance measures, one (1) blank sample for each sampled unit and one (1) prepared spike sample for every twenty (20) environmental samples taken.

3312 DUST SAMPLING TECHNICIAN REQUIREMENTS

3312.1 A certified dust sampling technician shall:

(a) Have in their possession at any job work site a copy of their initial course completion certificate and, if applicable, a copy of their most recent refresher course completion certificate;

(b) Comply with the clearance examination requirements under either §§ 3306.2 or 3311.6, as applicable; and

(c) Produce a Clearance Report consistent with the requirements under §3302.7(e).

3312.2 A dust sampling technician shall not conduct any clearance examination activities as part of producing an initial clearance report for a property for which DDOE has issued an Order to Eliminate Lead-Based Paint Hazards, nor as part of producing a clearance report following an abatement.

3313 CERTIFICATION REQUIREMENTS FOR INDIVIDUALS PERFORMING LEAD-BASED PAINT HAZARD IDENTIFICATION AND ELIMINATION ACTIVITIES OR RENOVATION ACTIVITIES: GENERAL

3313.1 Before an individual may perform a lead-based paint activity, clearance examination, or renovation in a dwelling unit or child-occupied facility, built

before 1978, an individual shall obtain the appropriate certification from DDOE and comply with this section, and with §§ 3314 or 3315, as applicable.

3313.2 Each applicant for certification shall submit to DDOE the following documents for use in consideration of the applicant's qualification for certification:

(a) Official academic transcripts or diplomas, as evidence of meeting the education requirements;

(b) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(c) Course completion certificates from lead-specific or other relevant training courses, issued by an accredited training program, as evidence of meeting the training requirements.

3313.3 DDOE shall certify an applicant as a lead-based paint inspector, risk assessor, lead project designer, abatement worker or supervisor, dust sampling technician or renovator, if the application is complete and the applicant satisfies the requirements of the rules and the Acts, successfully completes the pertinent course, and pays the appropriate certification fee to DDOE, in accordance with §3324, within five (5) business days of receipt of the complete application package.

3313.4 To maintain certification in a particular discipline, a certified individual shall apply to and be re-certified by DDOE in that discipline, provided the individual has completed the appropriate training course, either refresher or initial as applicable, through a D.C. or EPA accredited training provider, or from another EPA-authorized, state-accredited training provider.

3313.5 An individual seeking certification renewal shall submit the application materials and shall pay the appropriate certification renewal fee to DDOE, in accordance with §3324, at least five (5) business days before their certification expires.

3313.6 Upon receiving DDOE certification, an individual conducting renovation or lead-based paint activities shall comply with the provisions of §§ 3319 and 3321 and all other applicable laws.

3313.7 If the individual seeking renewal of certification fails to complete the refresher course before the expiration date of their current certification, as required in §3313.4, the individual shall re-take the initial course to become certified again.

3314 CERTIFICATION OF INDIVIDUALS: SPECIFIC REQUIREMENTS

3314.1 Except as provided in §3317.1, the following disciplines are required to be certified by DDOE before performing a renovation, a clearance examination, or any lead-based paint activity, except for interim controls, in a dwelling unit or child-occupied facility built before 1978:

(a) Risk Assessor;

(b) Lead-Based Paint Inspector;

(c) Abatement Worker;

(d) Abatement Supervisor;

(e) Certified Renovator;

(f) Dust Sampling Technician; and

(g) Lead Project Designer.

3314.2 Except as provided under §3315, an applicant for certification to engage in lead-based paint activities as an inspector, risk assessor, lead abatement worker, supervisor, or lead project designer, shall:

(a) Submit an application to DDOE via mail or in person, demonstrating that the individual meets all requirements of this section for the particular discipline for which certification is sought;

(b) Have a valid Department of Consumer and Regulatory Affairs (DCRA) Basic Business License, if one is required, or be employed by a business entity that possesses such a license;

(c) Complete an EPA or a D.C. accredited course in the appropriate discipline and receive a course completion certificate from an EPA or D.C. accredited training provider;

(d) Pass the third-party certification exam in the appropriate discipline offered by DDOE;

(e) Pass the DDOE-administered exam that tests the applicant's knowledge of the District's relevant legal requirements pertaining to the relevant discipline; and

(f) Pay DDOE the appropriate certification fee required under §3324.

3314.3 A risk assessor applicant shall meet or exceed the experience and/or education requirements set forth in §3314.10.

3314.4 An abatement supervisor applicant shall meet or exceed the experience and/or education requirements set forth in §3314.11.

3314.5 A lead project designer applicant shall meet or exceed the experience and/or education requirements set forth in §3314.12.

3314.6 A certified renovator applicant shall meet or exceed the experience and/or education requirements set forth in §3314.13.

3314.7 A dust sampling technician shall meet or exceed the experience and/or education requirements set forth in §3314.14.

3314.8 A lead-based paint inspector applicant need not provide prior experience documentation, but shall provide documentation of a high school diploma or a more advanced degree.

3314.9 An abatement worker applicant need not provide prior experience or education documentation.

3314.10 An applicant for certification as a risk assessor shall:

(a) Successfully complete an accredited initial training course for lead-based paint inspectors and a D.C. accredited initial training course for risk assessors, and provide documentation of one (1) of the following:

(1) A bachelor's degree and one (1) year of experience in a related field, such as lead, asbestos, or other environmental hazard identification or remediation work, or in construction;

(2) An associate’s degree and two (2) years of experience in a related field, such as lead, asbestos, or other environmental hazard identification or remediation work, or in construction;

(3) A high school diploma or its equivalent, and at least three (3) years of experience in a related field, such as lead, asbestos, or other environmental hazard identification or remediation work, or in construction; or

(4) Certification as an industrial hygienist, professional engineer, or registered architect, or as another environmental or construction-related professional; and

(b) Demonstrate that the applicant’s skills are directly transferable to the job activities a risk assessor is typically engaged in, and provide the following set of information, unless provided with a DDOE waiver for this requirement, based upon a DDOE determination that other alternative prior work experience submitted instead by the applicant for consideration is sufficiently comparable:

(1) Provide a list of ten (10) different addresses where the applicant has conducted work while currently certified as a lead-based paint inspector, which shall include the following information:

(A) Address of each property, including unit number if applicable;

(B) Type of activity conducted at each property, such as an XRF survey, paint chip sampling, dust sampling, or soil sampling;

(C) Date each activity took place; and

(D) Signature of supervisor or other senior management who confirms that each activity being vouched for took place as described by the applicant.

3314.11 An applicant for certification as an Abatement Supervisor shall demonstrate that he or she has skills directly transferable to the job activities for a supervisor based upon:

(a) At least one (1) year of experience as a certified lead-based paint abatement worker; or

(b) At least two (2) years of experience in a related field, such as lead, asbestos, or environmental hazard identification or remediation work, or in the building trades.

3314.12 An applicant for certification as a lead project designer shall provide documentation of the following:

(a) A bachelor's degree in engineering, architecture, or a related profession, and one (1) year of experience in building construction and design or a related field; or

(b) At least four (4) years of experience in building construction and design.

3314.13 An applicant for certification as a renovator shall:

(a) Successfully complete the EPA accredited renovator course and be certified by EPA as a renovator, or successfully complete the D.C. accredited renovator course; and

(b) Have a valid DCRA Basic Business License, or be employed by a certified renovation firm that has a D.C. license as a renovation firm.

3314.14 Except as provided under §3315, an applicant for certification as a dust sampling technician shall:

(a) Successfully complete the D.C.-accredited dust sampling technician course;

(b) Document completion of the course by submitting a certificate to DDOE; and

(c) Pass a DDOE-administered exam that tests the applicant's knowledge of the District's relevant legal requirements pertaining to dust sampling technicians.

3314.15 An individual who successfully completes a D.C. accredited lead-based paint inspector or risk assessor course may take a D.C. accredited refresher dust sampling technician course in lieu of the initial training required by §3314.14(a) to become a dust sampling technician.

3314.16 A certification issued to an individual by DDOE as a lead-based paint inspector, risk assessor, lead project designer, abatement worker, or supervisor under this section shall expire twenty-four (24) months from the date of issuance, and a certification for renovator or dust sampling technician expires five (5) years from the date of initial issuance.

3315 CERTIFICATION BY RECIPROCITY

3315.1 Submission of a current, valid certification for any discipline requiring certification under §3314 that is issued by EPA or another EPA approved state program is sufficient for certification in the District if the applicant meets all other requirements of this section.

3315.2 An applicant for certification by reciprocity shall:

(a) Pass a DDOE examination that tests knowledge of the legal requirements specific to the District of Columbia;

(b) Have a valid DCRA license to do business in the District of Columbia, if one is required; and

(c) Pay the applicable certification fee required by this chapter.

3315.3 DDOE certification based on reciprocity shall expire on the same date as that of the certification upon which the approval is based, but no more than two (2) years from date of issue by the District government, except that DDOE certification for renovators and dust sampling technicians shall expire no more than five (5) years from date of issue by the District government.

3316 CERTIFICATION OF BUSINESS ENTITIES PERFORMING LEAD-BASED PAINT ACTIVITIES AND OF FIRMS CONDUCTING RENOVATION ACTIVITIES

3316.1 To become certified, a business entity or a firm shall comply with all applicable requirements of this section, before any employee or sub-contractor of the business entity or firm may conduct a lead-based paint activity, clearance

examination, or renovation in a dwelling unit or child-occupied facility, built before 1978.

3316.2 The business entity or firm shall be responsible for ensuring that each employee and subcontractor of the business entity conducting a lead-based paint activity, clearance examination, or renovation for the entity, are:

(a) Certified pursuant to §§ 3314 or 3315;

(b) Comply with the provisions of §§ 3319 and 3321; and

(c) Comply with all applicable Federal and District laws, regulations, and rules governing the disposal of all waste containing lead.

3316.3 An entity applying for certification as a business that conducts lead-based paint activities or as a firm that conducts renovation activities in the District of Columbia shall:

(a) Document that the entity has a valid DCRA license, if required, to do business in the District;

(b) Submit documentation to DDOE that proves that the entity has liability insurance for at least one million dollars ($1,000,000), that is valid for the period of the DDOE business entity certification;

(c) Confirm that the applicant entity is not in debt to the District government for more than one hundred dollars ($100), nor currently delinquent in any legal obligation owed to the District government;

(d) Execute a District Government Basic Business License Clean Hands Self-certification form stating that paragraph (c) above has been met; and

(e) Pay the applicable certification fee required under §3324.

3316.4 The business entity or firm shall comply with the recordkeeping requirements of D.C. Official Code § 8-231.01 *et seq.* (2011 Supp.).

3316.5 A business entity or firm's certification shall expire after five (5) years.

3317 EXCEPTIONS TO THE CERTIFICATION REQUIREMENT

3317.1 The requirement in §3314.1 that an individual be certified prior to engaging in any lead-based paint activity does not apply to the following:

(a) Individuals who perform lead-based paint activities or renovations in a residence which they own, provided that the residence is occupied solely by the owner or the owner's immediate family, and provided that there is no child under age six (6) and no pregnant woman residing therein;

(b) Except for window and door removal or replacement pursuant to an Order to Eliminate Lead-Based Paint Hazards, performance of maintenance, repair, or renovation work by an individual or entity that results in disturbances of lead-based paint in a total of two square feet (2 ft.²) or less of surface area per room, or in a total of twenty square feet (20 ft.²) or less of exterior surface;

(c) Individuals who perform maintenance, repair, painting, and renovation work that does not disturb painted surfaces; and

(d) Individuals who perform risk assessment and lead-based paint inspections for litigation or other forensic purposes, in compliance with all work practice rules established by DDOE pursuant to this chapter, provided such individuals possess the appropriate certification issued by EPA or by an EPA approved state program.

3318 CERTIFICATION AND ACCREDITATION DENIAL, SUSPENSION, OR REVOCATION

3318.1 After notice and opportunity for hearing, DDOE may suspend, revoke, modify, or refuse to issue, renew, or restore a certification or accreditation issued to an individual or an entity under this chapter if DDOE finds that the applicant or holder:

(a) Has failed to comply with a provision of the Acts or a rule in this chapter;

(b) Has misrepresented facts relating to a lead-based paint activity to a client, customer, or DDOE;

(c) Has made a false statement or misrepresentation material to the issuance, modification, or renewal of a certification, permit, or accreditation;

(d) Has submitted a false or fraudulent record, invoice, or report;

(e) As a training provider, or as an instructor, has provided inaccurate information or inadequate training;

(f) Has a history of repeated violations of District or federal law or regulation;

(g) Has had a certificate, permit, or accreditation denied, revoked, or suspended in another state or jurisdiction; or

(h) Has failed to comply with federal or District lead-based paint statutes or regulations.

3318.2 In addition to the bases listed in §3318.1, DDOE may revoke or suspend a business entity or a firm certification if it has had its authorization to do business in the District of Columbia revoked or suspended.

3318.3 When DDOE proposes to take action pursuant to §3318.1, it shall provide the applicant or holder with:

(a) A statement of the legal and factual basis for the proposed action;

(b) The proposed effective date and duration of a proposed refusal to issue, renew, or restore a certification or accreditation, whether for an individual or a business entity;

(c) The method for requesting a hearing to appeal the decision by DDOE before it becomes final; and

(d) Any additional information that DDOE may decide is appropriate.

3318.4 If the individual, firm, or business entity requests a hearing pursuant to this section, DDOE shall provide the individual or entity an opportunity to submit a written statement in response to DDOE's statement of the legal and factual basis and provide any other explanations, comments, and arguments it deems relevant to the proposed action.

3319 LEAD-SAFE WORK PRACTICES: GENERAL

3319.1 Except as provided in §3320, any owner, individual, or entity engaged in an activity that disturbs a painted surface and that by so doing may generate a lead-based paint hazard, such as paint chips, dust, or debris, shall use lead-safe work practices as set forth in this chapter and D.C. Official Code §8-231.11 (2011 Supp.), whenever the property or facility was built prior to 1978.

3319.2 Except as provided in §3320, lead-safe work practices, as set forth in this chapter and D.C. Official Code § 8-231.01 *et seq.* (2011 Supp.), apply to individuals or business entities performing renovation, remodeling, maintenance, repairs, gut rehab, demolition, carpentry, HVAC, roofing, siding, plumbing, painting, or electrical work, inside or on the exterior surfaces of a dwelling unit or a child-occupied facility, if there is a danger of lead-based paint hazards being generated.

3319.3 An individual or entity shall:

(a) Prepare interior work areas by removing personal belongings, rugs, and window coverings, or by covering same with plastic whose seams and edges are taped or otherwise sealed;

(b) Prepare exterior work areas by removing any moveable items or by covering them with plastic whose seams and edges are taped or otherwise sealed;

(c) Cover the floor and any furniture with a taped-down plastic covering of at least six (6) mil thickness that will not tear easily;

(d) For interior work, the secure covering shall extend to no fewer than six feet (6 ft.) beyond the perimeter of surfaces where work that disturbs painted surfaces is taking place;

(e) For exterior work, cover the soil, grass, or concrete with a taped-down or otherwise secured plastic of at least six (6) mil thickness that will not tear easily, and extend the covering to at least ten feet (10 ft.) beyond the perimeter of surfaces where work that disturbs painted surfaces is taking place;

(f) Isolate interior work areas so that no dust or debris leaves the work areas while work is being performed, while ensuring that such containment does not interfere with occupant and worker egress in case of an emergency;

(g) For exterior work, close all doors and windows within twenty feet (20 ft.) of any area where work that disturbs painted surfaces is taking place, and all doors and windows on any floors directly below the work areas, within a horizontal plane of twenty feet (20 ft.) from any work area;

(h) Take reasonable measures to ensure all work clothes, shoes, tools, and other items, including the exteriors of waste containers, are free of dust and debris before workers exit or items are removed from the work area;

(i) Cover doors located within the area of containment with plastic so that workers can pass through, while confining dust and debris to the work area;

(j) Take the necessary precautions to ensure no dust or debris migrates over to neighboring properties or structures;

(k) Use a spray bottle to mist any painted surfaces with water prior to scraping, sanding, drilling, or cutting any painted surfaces;

(l) Close and cover all duct openings in the work area with taped-down plastic sheeting or other impermeable material;

(m) At least once at the end of each work day, spray-mist and collect all paint chips and debris and seal them in a heavy-duty bag that will not tear easily, without dispersing any paint chips or debris;

(n) Upon completion of work disturbing painted surfaces, spray-mist and fold all plastic coverings, dirty-side inwards, taping the folded plastic coverings shut or sealing them in heavy-duty bags that do not tear easily;

(o) Upon completion of work disturbing painted surfaces, clean all objects and surfaces in the work area and within eight feet (8 ft.) of the work area; and

(p) Ensure that the work area and those areas within eight (8) feet of the work area have no visible dust or debris left after the final work area cleanup has been completed.

3319.4 In addition, any owner, individual, firm, or business entity shall:

(a) Comply with the following work practice standards, as applicable:

(1) Work practice standards in 40 CFR §745.226 and 40 CFR §745.227, or any successor regulation of EPA;

(2) U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) standards relating to lead, including those standards found at 29 CFR §1926.62 and 29 CFR §1910.1025, and any successor regulations;

(3) U.S. Department of Housing and Urban Development (HUD) Methods and Standards for Lead-Paint Hazard Evaluation and Hazard Reduction Activities contained in 24 CFR Part 35, and any successor regulations; and

(4) Any other standards required under this chapter;

(b) Conform with the prohibition of unsafe practices listed at 24 CFR §35.140(2008);

(c) Prevent paint dust, chips, debris, or residue from being dispersed onto adjacent property or increasing the risk of public exposure to lead-based paint; and

(d) Adhere to other requirements for renovations listed in 40 CFR §§ 745.80 through 745.92.

3320 EXCEPTIONS TO LEAD-SAFE WORK PRACTICES REQUIREMENTS

3320.1 The lead-safe work practices in §3319 do not apply to the following:

(a) Individuals who perform lead-based paint activities in residences that they own; provided, that the residence is occupied by the owner or by the owner's immediate family, and there is no child under age six (6) and no pregnant woman residing therein; and

(b) Performance of maintenance, repair, or renovation work resulting in disturbances of lead-based paint in a total of two square feet (2 ft.^{2}) or less of surface area per interior room, or twenty square feet (20 ft.^{2}) or less of exterior surface area, provided such work does not include full or partial window removal or replacement, which activities shall always trigger the use of lead-safe work practices.

3321 PROHIBITED PRACTICES

3321.1 The practices listed in this subsection are prohibited when performing any lead-based paint activity. No individual or entity shall use:

(a) Open flame burning or torching;

(b) Machine sanding or grinding or use of a needle gun without a high-efficiency particulate air (HEPA) local exhaust control;

(c) Abrasive blasting or sandblasting without HEPA local exhaust control;

(d) Heat guns operating at or above eleven hundred degrees Fahrenheit (1100° F) or charring the paint;

(e) Dry sanding or dry scraping, except:

(1) Dry scraping within one foot (1 ft or 0.30 m.) of electrical outlets;

(2) Dry scraping in conjunction with heat guns operating below eleven hundred degrees Fahrenheit (1100° F); or

(3) Dry scraping when treating defective paint spots totaling no more than two square feet (2 ft.² or 0.2 m.²) in any one interior room or space;

(f) Methylene chloride;

(g) Stripping paint in a poorly ventilated space using a volatile stripper that is a hazardous substance as defined in 16 CFR §1500.3, or any chemical which is a physical hazard or a health hazard; and

(h) Scraping, sanding, drilling into, cutting, or otherwise disturbing more than two square feet (2 ft.²) of paint in or on a residential property or a child-occupied facility built before 1978 without the use of appropriate containment measures.

3322 ACCREDITATION OF TRAINING PROVIDERS

3322.1 A training provider shall be accredited separately for each training and refresher course offered by that training provider. The courses requiring accreditation are those for the following disciplines: lead-based paint inspector, risk assessor, abatement worker, abatement supervisor, lead project designer, renovator, and dust sampling technician. To receive accreditation, a training provider shall:

(a) Comply with the accreditation requirements set forth in 40 CFR §745.225, except for §745.225(c)(8)(iv);

(b) Submit an application to DDOE for accreditation approval, or provide proof of prior accreditation by EPA, or a state EPA approved accredited training provider that contains the information required for each individual course set forth in 40 CFR §745.225;

(c) Submit all course materials; and

(d) Pay the appropriate fee pursuant to §3324, except as provided for in §3322.7.

3322.2 Accreditation of a training provider by DDOE shall expire thirty-six (36) months from the date of its issuance.

3322.3 A training provider shall notify DDOE no less than one (1) week in advance of each course being offered, including name of instructor and course, and location, date, and time, of the training.

3322.4 A training provider shall notify DDOE of a cancellation of a course at least three (3) business days before the date the training was scheduled.

3322.5 A training provider shall forward to DDOE a copy of each certificate awarded to any student who successfully completes training, or a list of the students who received a certificate for successfully completing a particular training course, within one (1) week after issuance of such certificate.

3322.6 A training provider shall provide DDOE with at least two (2) weeks advance notification of any change in key staff, which for purposes of this subsection shall be limited to the training manager and the principal course instructor.

3322.7 A training provider shall be exempt from payment of an accreditation application fee, if the training provider is a District Government agency or is a non-profit 501(c)(3) organization whose primary place of business place of business is in the District of Columbia.

3322.8 DDOE shall accredit a training provider that already has been accredited by EPA, on a reciprocity basis, without a complete application; provided, that the training provider:

(a) Submits a copy of all course materials; and

(b) Pays the appropriate fee pursuant to §3324, except as provided for in §3322.7.

3322.9 All applications completed pursuant to this section shall be reviewed and acted on within thirty (30) days of their receipt by DDOE.

3322.10 D.C. accredited training providers shall issue course completion certificates that expire two (2) years from the course date for individuals certified in the District of Columbia.

3323 LEAD POISONING PREVENTION FUND

3323.1 Use of funds from the Lead Poisoning Prevention Fund (Fund) shall be in accordance with D.C. Official Code §8-231.09 (2011 Supp.) and this chapter.

3323.2 A property owner who is seeking financial assistance from DDOE to comply with the requirements of the Acts and whose request is consistent with the terms set by D.C. Official Code §8-231.09 (2011 Supp.), may apply for assistance from the Fund by:

(a) Completing an application form developed by the Director;

(b) Providing a copy of the previous year's or the most recent tax return filed with the Federal Government, or a Government-issued statement confirming the owner's exempt status from such filing;

(c) Providing a statement of current income detailing all sources of current income, along with a statement of current assets detailing all bank accounts, securities, and other financial holdings;

(d) Providing a statement of need stating the amount of financial assistance being requested and relating it to the cost of work needed to comply; and

(e) Completing a D.C. Clean Hands Form affirming that the applicant does not carry more than one hundred dollars ($100) in outstanding debt to the District of Columbia and is not currently delinquent with respect to meeting any legal obligation to the District of Columbia.

3323.3 The applicant must provide two (2) hard copies of each item enumerated in §3323.2 above and submit it by certified mail or by hand delivery, at least fifteen (15) calendar days prior to the relevant due date for the specific use of the funds being requested. The application and supporting documents shall be submitted to the Lead and Healthy Housing Division at DDOE, 1200 First Street NE, 5th Floor, Washington D.C. 20002.

3323.4 Funding will be subject to the availability of appropriations for this purpose.

3324 FEES: CERTIFICATION, PERMITTING, AND ACCREDITATION

3324.1 Initial and renewal certification fees for the disciplines of lead-based paint inspector, risk assessor, abatement supervisor, and lead project designer shall be set at three hundred fifty dollars ($350), for both initial certification and each subsequent renewal.

3324.2 The certification fee for a lead abatement worker, renovator, and dust sampling technician shall be set at one hundred dollars ($100), for both initial certification and each subsequent renewal.

3324.3 The certification fee for either a renovation firm or a business entity shall be set at three hundred dollars ($300), for both initial certification and each subsequent renewal.

3324.4 The certification fee for a business entity or a renovation firm seeking simultaneous certification as both a renovation firm and as a business entity certified to perform lead-based paint activities shall be set at five hundred fifty dollars ($550), for both initial certification and each subsequent renewal.

3324.5 The fee for a lead abatement permit is fifty dollars ($50), plus three percent (3%) of the total agreed-upon contract price for the lead abatement portion of the work.

3324.6 The fee for a renovation permit is fifty dollars ($50), plus two percent (2%) of the total agreed-upon contract price for the renovation portion of the work.

3324.7 Initial and refresher course accreditation fees for training providers are as follows:

Initial training course accreditation fee schedule:

Lead-Based Paint Inspector:	$850
Risk Assessor:	$850
Abatement Worker:	$850
Abatement Supervisor:	$850
Lead Project Designer:	$500
Renovator:	$850
Dust Sampling Technician:	$500

Refresher training course accreditation fee schedule:

Lead-Based Paint Inspector:	$650
Risk Assessor:	$650
Abatement Worker:	$650
Abatement Supervisor:	$650

Project Designer:	$300
Renovator:	$650
Dust Sampling Technician:	$300

Renewal of initial and refresher course accreditation fees are as follows:

Renewal of initial training course accreditation fee schedule:

Lead-Based Paint Inspector:	$600
Risk Assessor:	$600
Abatement Worker:	$600
Abatement Supervisor:	$600
Project Designer:	$400
Renovator:	$600
Dust Sampling Technician:	$400

Renewal of refresher course accreditation fee schedule:

Lead-Based Paint Inspector:	$500
Risk Assessor:	$500
Abatement Worker:	$500
Abatement Supervisor:	$500
Project Designer:	$250
Renovator:	$500
Dust Sampling Technician:	$250

3324.8 All certification, permitting, and accreditation fees shall be subject to periodic revision, as deemed advisable by DDOE.

3324.9 DDOE shall assess a twenty-five dollar ($25) fee to provide a replacement certification card or accreditation letter.

3399 DEFINITIONS

3399.1 When used in this chapter, the following terms shall have the meanings ascribed (some of the definitions were codified in the Acts, thus indicated as [Statutory], and are reprinted below for regulatory efficiency):

Abatement – a set of measures, except interim controls, that eliminates lead-based paint hazards by either the removal of paint and dust, the enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or covering of soil, and all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures. [Statutory]

Accredited training provider – a training provider that has been approved by the Mayor to provide training for individuals who conduct lead-based paint activities. [Statutory]

Business entity – a partnership, firm, company, association, corporation, sole proprietorship, government, quasi-government entity, nonprofit organization, or other business concern. [Statutory]

Child-occupied facility – a building, or portion of a building, constructed prior to 1978, which as part of its function receives children under the age of six (6) on a regular basis, and is required to obtain a certificate of occupancy as a precondition to performing that function. The term "child-occupied facility" may include a preschool, kindergarten classroom, and child development facility licensed under subchapter II of chapter 20 of title 7 of the D.C. Official Code. The location of a child-occupied facility as part of a larger structure does not make the entire structure a child-occupied facility. Only the portion of the facility occupied or regularly visited by children under age six (6) shall be considered the child-occupied facility. [Statutory]

Clearance examination – an evaluation of a property to determine whether the property is free of any deteriorated lead-based paint and underlying condition, or any lead-based paint hazard, underlying condition, lead-contaminated dust, and lead-contaminated soil hazards, that is conducted by a risk assessor, a lead-based paint inspector, or in accordance with limitations specified by statute or by rule, a dust sampling technician. [Statutory]

Clearance report – a report issued by a risk assessor, a lead-based paint inspector, or a dust sampling technician that finds that the area tested has passed a clearance examination, and that specifies the steps taken to ensure the absence of lead-based paint hazards, including confirmation that any encapsulation performed as part of a lead hazard abatement strategy was performed in accordance with the manufacturer's specifications.[Statutory]

Containment – a system, process, or barrier used to contain lead-based paint hazards inside a work area. [Statutory]

Day – a calendar day. [Statutory]

Deteriorated paint – paint that is cracking, flaking, chipping, peeling, chalking, not intact, or otherwise separating from the substrate of a building component, except that pinholes and hairline fractures attributable to the settling of a building shall not be considered deteriorated paint. [Statutory]

Director – the Director of the District Department of the Environment.

Dust action level – the concentration of lead that constitutes a lead-based paint hazard for dust and requires lead-based paint hazard elimination. [Statutory]

Dust sampling technician – an individual who:

(a) Has successfully completed an accredited training program;

(b) Has been certified by the District to perform a visual inspection of a property to confirm that no deteriorated paint is visible at the property, and to sample for the presence of lead in dust for the purposes of certain clearance testing and lead dust hazard identification; and

(c) Provides a report explaining the results of the visual inspection and dust sampling. [Statutory]

Dwelling unit – a room or group of rooms that form a single independent habitable unit for permanent occupation by one (1) or more individuals that has living facilities with permanent provisions for living, sleeping, eating, and sanitation. The term "dwelling unit" does not include:

(a) A unit within a hotel, motel, or seasonal or transient facility, unless such unit is or will be occupied by a person at risk for a period exceeding thirty (30) days;

(b) An area within the dwelling unit that is secured and accessible only to authorized personnel;

(c) Housing for the elderly, or a dwelling unit designated exclusively for persons with disabilities, unless a person at risk resides or is expected to reside in the dwelling unit or visit the dwelling unit on a regular basis; or

(d) An unoccupied dwelling unit that is to be demolished; provided, that the dwelling unit will remain unoccupied until demolition. [Statutory]

Elevated blood lead level – the concentration of lead in a sample of whole blood equal to or greater than ten micrograms of lead per deciliter (10 μg/dL) of blood, or such more stringent standard as may be established by the U.S. Centers for Disease Control and Prevention as the appropriate level of concern, or adopted by the Mayor by rule. [Statutory]

Encapsulation – the application of a covering or coating that acts as a barrier between the lead-based paint and the environment, and that relies for its durability on adhesion between the encapsulant and the painted surface and on the integrity of the existing bonds between paint layers and between the paint and the substrate. [Statutory]

Enclosure – the use of rigid, durable construction materials that are mechanically fastened to the substrate to act as a barrier between lead-based paint and the environment. [Statutory]

EPA – the United States Environmental Protection Agency.

Exterior surfaces – means:

(a) All surfaces that are attached to the outside of a property;

(b) All structures that are appurtenances to a property;

(c) Fences that are a part of the property; and

(d) For a property within a multi-unit dwelling, all painted surfaces in stairways, hallways, entrance areas, recreation areas, laundry areas, and garages that are common to individual dwelling units or located on the property. [Statutory]

Interim controls – a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

Lead-based paint – any paint or other surface coating containing lead or lead in its compounds in any quantity exceeding one half percent (0.5%) of the total weight of the material or more than one milligram per square centimeter (1.0 mg/cm^2), or such more stringent standards as may be specified in federal law or regulations promulgated by EPA or HUD, which shall be adopted by the Mayor by rule. [Statutory]

Lead-based paint activities – the identification, risk assessment, inspection, abatement, use of interim controls, or elimination of lead-based paint, lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil, and all planning, project designing, and supervision associated with any of the these activities. [Statutory]

Lead-based paint hazard – any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, deteriorated lead-based paint or presumed lead-based paint, or lead-based paint or presumed lead-based paint that is disturbed without containment. [Statutory]

Lead-based paint inspector or inspector – an individual who has been trained by an accredited training provider and certified by the District to conduct lead inspections. For the purpose of clearance testing, a lead-based paint inspector also samples for the presence of lead in dust and in bare soil. [Statutory]

Lead-contaminated dust – surface dust based on a wipe sample that contains a mass per area concentration of lead equal to or exceeding:

(a) For dust action levels or for the purpose of clearance examination:

(1) Forty micrograms per square foot (40 $\mu g/ft^2$) on floors; or

(2) Two hundred fifty micrograms per square foot (250 μg/ft²) on interior windowsills;

(b) For the purpose of clearance examination:

(1) Four hundred micrograms per square foot (400 μg/ft²) on window troughs; or

(2) Eight hundred micrograms per square foot (800 μg/ft^2) on concrete or other rough exterior surfaces; or

(c) Such more stringent standards as may be:

(1) Specified in federal law;

(2) Specified in regulations promulgated by the EPA or HUD; or

(3) Adopted by DDOE by rule. [Statutory]

Lead-contaminated soil – bare soil on real property that contains lead in excess of four hundred parts per million (400 ppm), or such other more stringent level specified in federal law or regulations promulgated by EPA or HUD, and adopted by the Mayor by rule. [Statutory]

Lead-disclosure form – the form developed by DDOE for a property owner to disclose an owner's knowledge of any lead-based paint or of any lead-based paint hazards, and information about any pending actions ordered by the Mayor pursuant to this law, to tenants, purchasers, or prospective tenants or purchasers. [Statutory]**Lead-free unit** – a unit for which the interior and exterior surfaces appurtenant to the unit do not contain any lead-based paint or other surface coatings that contain lead equal to or in excess of one milligram per square centimeter (1.0 mg/cm^2), and for which the approaches thereto remain lead-safe. The Mayor, by rule, may establish a method to ensure that approaches to lead-free units remain lead-safe. [Statutory]

Lead project designer – an individual who has been trained by an accredited training provider and certified by the District to review lead-based paint inspection reports and risk assessment reports and to develop detailed plans to abate lead-based paint and eliminate lead-based paint hazards.

Lead-safe work practices – a prescribed set of activities that, taken together, ensure that any work that disturbs a painted surface on a structure constructed prior to1978, generates a minimum of dust and debris, that any dust or debris generated is contained within the immediate work area, that access to the work area by non-workers is effectively limited, that the work area is thoroughly cleaned so as to remove all lead-contaminated dust and debris, and that all such dust and debris is disposed of in an appropriate manner, all in accordance with the methods and standards established by DDOE by rule consistent with applicable federal requirements, as they may be amended. [Statutory]

Owner – a person, firm, partnership, corporation, guardian, conservator, receiver, trustee, executor, legal representative, registered agent, or the federal government, who alone or jointly

and severally with others, owns, holds, or controls the whole or any part of the freehold or leasehold interest to any property, with or without actual possession. [Statutory]

Person at risk – a child under age six (6) years or a pregnant woman. [Statutory]

Presumed lead-based paint – paint or other surface coating affixed to a component in or on a dwelling unit or child-occupied facility, constructed prior to 1978. [Statutory]

Regularly visits – a child under the age of six (6) years or a pregnant woman who spends or is expected to spend one (1) hour or more at a residential dwelling unit or a single-family property, at least two (2) times per month, for at least nine (9) months in a given calendar year.

Relocation expenses – reasonable expenses directly related to relocation to temporary replacement housing that complies with the requirements of this chapter, including:

(a) Moving and hauling expenses;

(b) Payment of a security deposit;

(c) The cost of replacement housing; provided, that the tenant continues to pay the rent on the dwelling unit from which the tenant has been relocated; and

(d) Installation and connection of utilities and appliances. [Statutory]

Renovation – the modification of any existing structure or portion thereof that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement. The term "renovation" includes the removal, modification, or repair of painted surfaces or painted components, the removal of building components, weatherization projects, and interim controls that disturb painted surfaces. [Statutory]

Renovator – an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or by the District. [Statutory]

Risk assessment – an on-site investigation to determine and report the existence, nature, severity, and location of conditions conducive to lead poisoning, including:

(a) The gathering of information regarding the age and history of the housing and occupancy by persons at risk;

(b) A visual inspection of the property;

(c) Dust wipe sampling, soil sampling, and paint testing, as appropriate;

(d) Other activity as may be appropriate;

(e) Provision of a report explaining the results of the investigation; and

(f) Any additional requirements as determined by the Mayor. [Statutory]

Risk assessor – an individual who has been trained by an accredited training program and certified by the District to conduct risk assessments. [Statutory]

Underlying condition – the source of water intrusion or other problem that is causing paint to deteriorate which may be damaging to the substrate of a painted surface. [Statutory]

TITLE 22 DCMR (HEALTH) is amended as follows:

CHAPTER 73 (CHILDHOOD LEAD POISONING PREVENTION) is amended as follows:

Subsection 7301.1 is amended to read as follows:

7301.1 Each health care provider or health care facility that has obtained parental consent shall, as part of a well-child care visit, perform a blood lead level (BLL) screening test on every child who resides in the District of Columbia and who is served by the provider or facility, unless an identical test was performed not more than twelve (12) months before the well-child visit. Blood lead level screening tests shall be performed according to the following schedule:

(a) Once between the ages of six (6) months and fourteen (14) months;

(b) Once between the ages of twenty-two (22) and twenty-six (26) months; and

(c) At least twice if a child over the age of twenty-six (26) months has not previously been tested for BLL. The tests for children over the age of twenty-six (26) months shall be conducted before the child attains the age of six (6) years and shall be conducted at least twelve (12) months apart, or according to a schedule determined appropriate by the health care provider or health care facility.

Subsection 7303.2 is amended to read as follows:

7303.2 Each laboratory that analyzes a blood sample taken from a child residing in the District of Columbia shall, within a week after completion of the analysis, submit a report that meets the requirements in §7303.3, as follows:

(a) The laboratory shall submit a written report to the health care provider or the health care facility where the sample was taken;

(b) The laboratory shall submit a report to the Childhood Lead Poisoning Prevention Program, through the Program's electronic reporting system; and

(c) The laboratory shall immediately notify the health care provider or the health care facility and the Program of the results by telephone or fax if the child's BLL equals or exceeds ten micrograms of lead per deciliter (10 μg/dL).

Please direct all comments on these proposed rules, in writing, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* to Pierre Erville, DDOE Associate Director for Lead and Healthy Housing, 1200 First Street NE, 5th Floor, Washington D.C. 20002, by US mail, or via email at pierre.erville@dc.gov. Copies of the proposed rule may be obtained between the hours of 9:00 a.m. and 5:00 p.m. at the address listed above for a small fee to cover the cost of reproduction or on-line at http://ddoe.dc.gov.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF PROPOSED RULEMAKING

The District of Columbia Taxicab Commission (Taxicab Commission), pursuant to the authority set forth in D.C. Official Code § 47-2829(b), (d), (e), (e-1), and (i)(2001), sections 8(b)(1)(C), (D), (E), (F), (G), (I), (J), 14, and 20 of the District of Columbia Taxicab Commission Establishment Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(b)(1)(C), (D), (E), (F), (G), (I), (J), 50-313, and 50-319)(2001), section 105 of the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (120 Stat. 2023; D.C. Official Code § 50-381(a)) (2009 Repl.), and Mayor's Order 2007-231, dated October 17, 2007, hereby gives notice of its intent to adopt amendments to chapter 10 (Public Vehicles for Hire) in Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

The proposed amendment will: 1) update the process for applying for a public vehicle for hire operator license; 2) add standards of conduct for the first year probationary period; 3) clarify the penalty for cheating on a licensure examination; 4) clarify the *bona fide* residency requirement; 5) update the language regarding the "good moral character" requirement; 6) replace references to the Panel on Adjudication with references to the Office of Administrative Hearings; 7) update the lost and found procedure for items left in taxicabs and other public vehicles for hire; 8) update the consumer complaint review process; 9) establish graduated late fees for license renewal applications; 10) set forth types of conduct prohibited; and 11) update the content of the new operator license and refresher courses.

The Taxicab Commission hereby gives notice of its intent to issue final rules in not less than thirty (30) days after the publication of this notice in the *D.C. Register*.

Chapter 10, PUBLIC VEHICLES FOR HIRE, of Title 31, TAXICABS AND PUBLIC VEHICLES FOR HIRE, of the DCMR is amended as follows:

Section 1000, GENERAL REQUIREMENTS, is amended as follows:

Subsection 1000.1 is amended to read as follow:

1000.1 No person shall drive a public vehicle for hire in the District unless he or she has a valid operator identification license (Face Card) issued under the provisions of this chapter. A public vehicle for hire is any passenger vehicle for hire licensed in the District of Columbia including, but not limited to taxicabs and limousines.

Subsection 1000.8 is amended to read as follows:

1000.8 Any person who violates a provision of this chapter shall, upon conviction, be subject to the fine or penalty as provided in section 1017.

Subsection 1000.9 is amended to read as follows:

1000.9 Any order or act of the Chairperson shall, under the provisions of this chapter, be subject to review by the District of Columbia Office of Administrative Hearings. Application for review of any order or act shall be made in accordance with the rules prescribed by the District of Columbia Office of Administrative Hearings.

Section 1001, ELIGIBILITY FOR A HACKER'S LICENSE, is amended as follows:

Subsection 1001.5 is amended to read as follows:

1001.5 The Chairperson shall not issue a license under this chapter to a person who has a physical or mental disability or disease which might make him or her an unsafe driver of a public vehicle for hire.

Subsection 1001.6 is amended to read as follows:

1001.6 The Chairperson shall not issue a license under this chapter to a person who has not successfully completed the operator education course and who has not successfully passed the written examination administered by the Commission.

Subsection 1001.8 is amended to read as follows:

1001.8 The Chairperson shall not issue a license under this chapter to an employee of the Commission whose employment is concerned directly with the issuance of licenses to operate public vehicles for hire or enforcement of the laws, rules, and regulations related to the operation of motor vehicles or public vehicles for hire.

Subsection 1001.9 is amended to read as follows:

1001.9 The Chairperson shall not issue nor renew a license under this chapter to a person who has not, within the three (3) years immediately preceding the date of application for a license, been a bona fide resident living for at least one (1) year in the Metropolitan Area, and has not had at least one (1) year's driving experience as a licensed vehicle operator within the Metropolitan Area within that three (3) year period.

Subsection 1001.11 is amended to read as follows:

1001.11 The Chairperson shall not issue nor renew a license under this chapter to a person who has been convicted of offenses against traffic regulations of the District of Columbia or any jurisdiction with a frequency or of such severity as to indicate a disrespect for traffic laws, that fact being established by the point system

described in § 303 of title 18DCMR, or for a serious traffic offense or offenses which indicate a disregard for the safety of other persons or property. Applicants with eight (8) or more points on their license from any jurisdiction will not be issued a new or renewal license.

Subsection 1001.12 is amended to read as follows:

1001.12 The Chairperson shall not issue nor renew a license under this chapter to a person who, in the judgment of the Chairperson, is not of good moral character, under the standards provided in § 1001.13 through 1001.15.

Subsection 1001.13 is amended to read as follows:

1001.13 An applicant shall not be considered of good moral character if he or she is any of the following:

(a) Is an alcoholic;

(b) Is addicted to the use of drugs;

(c) Is on parole or probation at the time of the filing of his or her application for a license, except as provided in § 1001.14.

Subsection 1001.14 is amended to read as follows:

1001.14 Notwithstanding the provisions of § 1001.13, if an applicant is on parole or probation that arose out of a conviction other than those listed in § 1001.15, the parolee's or probationer's application may be considered for approval by the Chairperson if a letter from the appropriate parole or probation officer is submitted with the application affirmatively expressing his or her recommendation and support for the issuance of a hacker's license to the applicant.

Subsection 1001.15 is amended to read as follows:

1001.15 An applicant shall not be considered of good moral character if he or she has been convicted of or has served any portion of a sentence for the following crimes, or an attempt to commit any of the following crimes, within the three (3) years immediately preceding the filing of the application:

(a) Murder, manslaughter, mayhem, malicious disfiguring of another, abduction, kidnapping, burglary, theft, breaking and entering, robbery, or larceny;

(b) Assault with the intent to commit any offense punishable by imprisonment in the penitentiary;

(c) Assault on a hack inspector, police officer, or other government official, without regard to level of sentencing;

(d) A sex offense; or

(e) A violation of the narcotic laws, except simple narcotics possession without intent to distribute (misdemeanor) or possession of drug paraphernalia.

Section 1002 caption is amended to read as follows:

Section 1002, APPLICATION FOR A HACKER'S LICENSE; FEES, is amended as follows:

Subsection 1002.2 is amended to read as follows:

1002.2 Each application shall set forth the applicant's full lawful name (including middle name, or names, if any and any other names by which the applicant has been known), date of birth, sex, social security number, residence, and other information that the Chairperson may require to determine the applicant's identity, competency, bona fide residency and eligibility, including a record of all criminal and traffic charges entered against the applicant in the District and elsewhere and local and federal income tax filings.

Subsection 1002.6 is repealed.

Subsection 1002.7 is repealed.

New subsections 1002.8 through 1002.12 are added to read as follows:

1002.8 The Chairman may retain a portion of the license fee, not to exceed twenty-five percent (25%), for the administrative costs of processing applications that are denied after intake and processing.

1002.9 A false statement made in the application may result in denial of application for licensure or subsequent suspension or revocation of the license once issued.

1002.10 A denial, suspension or revocation of hacker's license is subject to appeal to the Office of Administrative Hearings for disposition as a complaint, except that a

denial for failure to successfully take and pass the written examination is not appealable.

Section 1003, HEALTH REQUIREMENTS, is amended as follows:

Subsection 1003.1 is amended to read as follows:

1003.1 Each application (including a renewal application) shall be accompanied by a certificate from a licensed physician who is a resident of the Metropolitan Area, certifying that, in the opinion of that physician, the applicant does not have any physical or mental disability or disease which might make him or her an unsafe driver of a public vehicle for hire.

A new subsection 1003.7 is added to read as follows:

1003.7 A license shall not be issued, or renewed, under this chapter to a person who has a mental disability or disease that would negatively impact his or her ability to meet the requirements of this chapter with respect to the operation of a taxicab, unless he or she provides a certificate from a licensed physician who is a resident of the Metropolitan Area certifying that, in the opinion of that physician, the person's mental disability or disease, as may be currently treated, does not negatively impact his or her ability to meet the requirements of this chapter with respect to the operation of a taxicab. If the person's mental disability or disease, or his or her treatment, substantially changes during the period of licensure, he or she shall provide a re-certification from a physician who is a resident of the Metropolitan Area or shall immediately surrender his or her license to the Commission.

Section 1004 is amended to read as follows:

1004 INVESTIGATION AND EXAMINATION OF APPLICANTS

1004.1 Upon receipt of an application for a hacker's license, the Chairperson shall investigate or cause to be investigated each applicant to verify the identity of the applicant and determine the competency, residency, fitness, and eligibility of the applicant for a license.

1004.2 The Chairperson shall require each applicant for a hacker's license to take a written examination.

1004.3 The examination shall test the applicant's knowledge in the areas including, but not limited to, familiarity with the Metropolitan Area, District of Columbia monuments and landmarks, customer service concepts, cultural sensitivity, disability accommodation requirements, and non-discrimination requirements.

1004.4 The examination shall also include any further physical and mental examination as the Chairperson finds necessary to determine the applicant's fitness to operate the type of vehicle for which application for a license is made.

1004.5 An applicant caught cheating or attempting to cheat on the examination shall be immediately expelled from the examination and disqualified from continuing the examination. The applicant's testing fee shall not be refunded. The applicant shall also be disqualified from re-applying for the examination for a period of not less than three (3) years. Disqualification for cheating on the licensure examination is not appealable.

1004.6 Upon successful completion of the operator education course and successful passage of the written examination administered by the Commission, an applicant shall have six (6) months to file an application for licensure.

Section 1005, ISSUANCE OF LICENSES, is amended as follows:

Subsection 1005.2 is amended to read as follows:

1005.2 The Chairperson shall collect the current license fee for each license issued.

Subsection 1005.5 is amended to read as follows:

1005.5 A person to whom a taxicab operator's license has been issued shall continue to reside within the Metropolitan Area during the term of the license and shall, no later than five (5) days after the termination of the residence within the Metropolitan Area, surrender the license to the Office.

Subsection 1005.6 is amended to read as follows:

1005.6 When the Commission obtains knowledge that the licensee is no longer in compliance with any of the license requirements, the Chairperson may initiate an action against the licensee to revoke or suspend the operator's license and retrieve the operator identification (Face) card.

New subsections 1005.7 through 1005.10 are added to read as follows:

1005.7 Upon successful completion of the initial application process, an applicant shall receive an initial one (l) year hacker license, which shall be a probationary period of licensure.

1005.8 During this probationary period, the Commission shall monitor complaints and violations relating to moral character, customer service, safety, discrimination, including destination discrimination, overcharging, and other consumer-based complaints.

1005.9 If the licensee is the subject of multiple consumer complaints, notices of infractions, or penalties during the probationary period, the Chairperson may require remedial actions, such as re-taking the operator training course or attending an anger management course or cultural sensitivity training, and/or take disciplinary actions including the imposition of fines and the suspension, revocation, or non-renewal of the license.

1005.10 Referral of a licensee for remedial action is not appealable and the cost for such remedial action shall be borne by the licensee.

Section 1006 is amended to read as follows:

1006 DENIAL OF LICENSE AND REAPPLICATION.

1006.1 An applicant who has been denied a license to operate a public vehicle for hire for reasons other than for failure to complete successfully an examination may file a new application for a license after the expiration of not less than six (6) months after the denial, unless the denial is reversed by the Office of Administrative Hearings.

1006.2 If an applicant files an appeal from a denial with the Office of Administrative Hearings and the Chairperson's denial is sustained, or if an operator's license has been suspended or revoked by the Commission and sustained, no new application may be made until the expiration of any waiting, suspension, or revocation period imposed.

1006.3 The decision of the Commission shall not be stayed during the pendency of an appeal to the Office of Administrative Hearings, unless the Office of Administrative Hearings issues an order imposing a stay.

1006.4 In determining the fitness of an applicant under § 1009 [Not for Hire], the Chairperson shall not take into account the conduct or record of the applicant upon which the waiting period was based. The determination of fitness shall be based on the conduct or the record of the applicant's conduct during and after the waiting period. If the personal conduct during the waiting period satisfies the personal conduct and other requirements of this chapter, the Chairperson may issue a license to the applicant.

1006.5 If the Chairperson discovers information not previously known to him or her, which relates to the moral character, fitness, or eligibility of the applicant and was not a part of the record in the proceeding of the Office of Administrative Hearings, the Chairperson may find on the basis of that information, that the moral character, fitness, or eligibility of the applicant is such that it does not

justify the issuance of the license and may again deny the issuance of a license. The applicant may appeal this denial to the Office of Administrative Hearings.

1006.6 The Chairperson shall establish repeat examinations for applicants who are denied licenses because of failing the qualifying examination under the provisions of § 1004. Repeat examinations shall be scheduled to permit a fair opportunity for applicants to successfully complete the examination. If an applicant fails to pass the examination after three (3) attempts, the applicant must re-take the operator's training course before being allowed to take the examination again.

Section 1007 is amended to read as follows:

1007 LOSS, THEFT, OR DESTRUCTION OF LICENSE

1007.1 In case of the loss, theft, or destruction of a public vehicle operator's or owner's license issued pursuant to the provisions of this chapter, the licensee shall immediately notify the Chairperson and file a report of that loss, theft, or destruction with the police department.

1007.2 Upon application made under oath on a form prescribed by the Chairperson, presentation of the official police report, and payment of the prescribed fee, the Chairperson shall issue a duplicate license.

Section 1008, LICENSE TO OPERATE AN AMBULANCE, FUNERAL CAR, OR SIGHTSEEING VEHICLE, is repealed.

The heading of Section 1009 is amended to read as follows:

Section 1009 SPECIAL LICENSE TO OPERATE "NOT FOR HIRE" PUBLIC VEHICLES

Subsection 1009.1 is amended to read as follows:

1009.1 The Chairperson, upon application, may issue a special public vehicle operator's identification license to a person otherwise qualified under this chapter for the purpose of operating a public vehicle licensed under this chapter for purposes other than for hire.

Subsection 1009.4 is amended to read as follows:

1009.4 A license issued under this section shall not be valid for the operation of a public vehicle when the vehicle is actually available for hire.

Subsection 1009.5 is amended to read as follows:

1009.5 The vehicle being operated by this type of licensee shall display a sign approved by the Chairperson that bears in capitalized black lettering at least three (3) inches high on a white background the words "NOT FOR HIRE AS TAXI NOR LIMO."

Subsection 1009.8 is amended to read as follows:

1009.8 The Chairperson shall collect the prescribed fee for each license issued to an applicant.

Subsection 1009.9 is amended to read as follows:

1009.9 Each special license issued under this section shall be marked on its face ”NOT VALID FOR HIRE AS TAXI OR LIMO.”

Section 1010, ISSUANCE OF VEHICLE LICENSES TO OWNERS OF PUBLIC VEHICLES FOR HIRE, is amended as follows:

Subsection 1010.7 is amended to read as follows:

1010.7 Each applicant for an owner’s license whose public vehicle is registered in the District shall present evidence that the vehicle has been inspected by the Department of Motor Vehicles and is in compliance with vehicle safety requirements and those vehicle requirements of the District of Columbia Taxicab Commission regulations for the purpose of enforcing the Commission's safety and comfort regulations.

Subsection 1010.10 is amended to read as follows:

1010.10 The Department of Motor Vehicles, acting as agent for the District of Columbia Taxicab Commission, shall inspect taxicabs to ensure compliance with the District of Columbia Taxicab Commission’s regulations concerning authorized vehicle type, paint color(s), trade name, insignias, rate and passenger rights signs, meter seals, cruising lights, upholstery condition, and sanitation.

Subsection 1010.13 is amended to read as follows:

1010.13 The Chairperson shall collect the prescribed fee for each license issued to an applicant.

Subsection 1011, OWNERS OF SIGHTSEEING BUSES LOCATED OUTSIDE THE DISTRICT, is repealed.

Section 1012 is amended to read as follows:

1012 ARTICLES LOST AND FOUND IN PUBLIC VEHICLES FOR HIRE

1012.1 Property found in a public vehicle for hire by an operator of the vehicle shall be reported by the operator to the District of Columbia Taxicab Commission and shall be surrendered to the Chairperson within twenty-four (24) hours.

1012.2 The Chairperson shall establish a repository in the Office of Taxicabs for property found in public vehicles for hire. All found property received by the Commission shall be deposited in the repository.

1012.3 The Office shall retain found property for a period of at least ten (10) business days after the property is deposited with the Office. If no claim is made for the property within the ten (10) business day period, the Office shall donate the property to a legally established charitable organization, such as a homeless shelter or battered women's shelter, or forward the property to the Property Clerk of the Metropolitan Police Department for proper disposition.

Section 1013 is amended to read as follows:

1013 COMPLAINTS AGAINST OPERATORS OF PUBLIC VEHICLES FOR HIRE

1013.1 A complaint against an operator of a public vehicle for hire shall be filed within thirty (30) days after the event giving rise to the complaint.

1013.2 A complaint shall be in writing, shall be signed by the person making the complaint, and shall state the address and telephone number of the complainant. The complaint shall be mailed or hand delivered to the Office of Taxicabs or sent by e-mail or facsimile to the Office of Taxicabs.

1013.3 The Chairperson shall, upon receiving a complaint, notify the operator against whom the complaint was made, by first class mail, postage prepaid, or certified mail, return receipt requested, of the nature of the complaint and direct that the operator shall file an answer to the complaint with the Chairperson within ten (10) days after receipt.

1013.4 Upon receiving an answer, the Chairperson shall notify the complainant of the contents of the answer. The Chairperson shall review the answer to determine whether the complaint and the answer establish a violation of the Commission's laws, rules, and regulations.

1013.5 If the answer is not satisfactory to the complainant, the complainant may request that additional information be requested by the Commission. The Chairperson

shall review the request and may, in his or her discretion, request additional information.

1013.6 If, after reviewing the complaint, the response, and any other relevant information, the Commission determines that the facts alleged in a complaint are accurate and constitute a violation of a law, rule, or regulation administered by the Commission, the Commission may impose the civil fine authorized by the applicable law, rule, or regulation. If the Commission determines that a suspension or revocation of the operator's license is appropriate, the Commission may itself impose a suspension or revocation or may forward the complaint file to the District of Columbia Office of Administrative Hearings for adjudication of the complaint by the Office of Administrative Hearings. The Office shall also inform the complainant and operator of its action.

1013.7 If the Commission determines that the facts alleged in a complaint are not accurate or do not constitute a violation of a law, rule, or regulation administered by the Commission, the complainant and operator shall be notified of the Commission's determination and the reason for the determination.

1013.8 Even if the facts alleged in a complaint do not constitute a violation of the law, rules, or regulations administered by the Commission, the Commission may nonetheless mediate the dispute.

1013.9 An operator may appeal to the Office of Administrative Hearings a fine imposed by the Commission, or a suspension or revocation of an operator's license. The appeal shall be made in accordance with the rules and procedures of the Office of Administrative Hearings.

1013.10 The District of Columbia Office of Administrative Hearings may adjudicate the imposition of a fine, suspension, or revocation for a violation of a law, rule, or regulation relating to any license issued by an agency of the District of Columbia government which permits the operation of a vehicle as a public vehicle for hire, including taxicabs.

1013.11 If a complaint is forwarded by the Commission to the Office of Administrative Hearings, a hearing shall be held by Office of Administrative Hearings in accordance with its rules and procedures.

1013.12 The Chairperson shall establish and maintain records of all complaints.

Section 1014 is amended to read as follows:

1014 RENEWAL OF LICENSE/LATE FEES

1014.1 A licensed operator of a public vehicle for hire may submit an application to renew the license to operate a public vehicle for hire forty-five (45) days before the expiration of the license.

1014.2 The renewal application shall be made on a form provided by the Chairperson. The form shall provide a list of documentation required by the Commission including, but not limited to, fingerprint/criminal background check application, character references, medical examination form, and residency and citizenship verification documents.

1014.3 If an applicant fails to submit an application to renew the license to operate a public vehicle for hire:

(a) Within one (1) to fifteen (15) days after the expiration date of the license, the person shall pay a late penalty of twenty-five dollars ($25);

(b) Within sixteen (16) to thirty (30) days following the expiration date of the license, the person shall pay a late penalty of fifty dollars ($50); and

(c) Within thirty-one (31) to forty-five (45) days after the expiration date of the license, the person shall pay a late penalty of one hundred dollars ($100).

1014.4 If an applicant fails to submit an application to renew the license to operate a public vehicle for hire within forty-five (45) days after the expiration date of the license, the person shall pay a late penalty of one hundred fifty dollars ($150) and shall be required to take and successfully complete the operator training course before being eligible for license renewal.

1014.5 If a person fails to submit an application to renew the license to operate a public vehicle for hire within one (1) year after the expiration date of the license, the person shall be required to apply for a new license to operate a public vehicle for hire pursuant to the provisions of this chapter.

Section 1015 is amended to read as follows:

1015 REFRESHER TRAINING REQUIRED FOR TAXICAB OPERATORS.

1015.1 All taxicab operators filing a renewal application for an identification (Face) card shall complete an operator re-training course when offered by the Commission. A notice shall be published by the Commission when the retraining course is being offered and required.

1015.2 The operator retraining course shall include, but need not be limited to, the following:

(a) Business practices, including general management principles, records management, and bookkeeping;

(b) Public relations and marketing skills, customer service, cultural sensitivity, and disability accommodation;

(c) District of Columbia geography with emphasis on the location of all streets and avenues, government buildings, and tourist sites;

(d) Compliance with local, state, and federal income regulations and filing requirements; and

(e) Local public vehicle for hire regulations.

Section 1016 is amended to read as follows:

1016 SPECIAL EVENT VEHICLE FORHIRE PERMIT

1016.1 The Office of Taxicabs may issue a special event vehicle for hire permit that authorizes a limousine or sedan licensed in another jurisdiction as a public vehicle for hire, to operate for hire in the District of Columbia for a period of not more than thirty (30) days during a particular special event. Only a vehicle properly registered as a public vehicle for hire in another jurisdiction is eligible for a special event vehicle for hire permit.

1016.2 Each person applying for a special event vehicle for hire permit shall file an application with the Office on a form provided by the Office. The application shall include, but need not be limited to, the following:

(a) The name, address, and telephone number of the applicant or registered owner of the vehicle;

(b) The make, model, year, and vehicle identification number;

(c) The jurisdiction where the vehicle is registered, registration number, expiration date of the registration, and license plate number; and

(d) The name and date of the special event for which the special event vehicle for hire permit is requested.

1016.3 A special event vehicle for hire permit issued pursuant to this section shall contain:

(a) The name of the permit holder;

(b) The date of issuance and the date of expiration of the permit;

(c) The name of the special event for which the permit is issued;

(d) The name of the owner of the vehicle;

(e) The make, model, and year of the vehicle;

(f) Vehicle identification number;

(g) The license plate number of the vehicle; and

(h) The jurisdiction where the vehicle is registered.

1016.4 A vehicle for which a special event vehicle for hire permit is issued may only be operated for hire in the District by a person who possesses a valid public vehicle for hire operator's identification card issued by the Commission or another jurisdiction.

1016.5 An application for a special event vehicle for hire permit shall pay the prescribed fee for the permit.

1016.6 A person who violates the provisions of this section shall be subject to a civil fine for operating a public vehicle for hire without a vehicle license.

A new Section 1017 is added to read as follows:

1017 PENALTY

1017.1 A violation of this chapter shall be subject to:

(a) The fine or penalty set forth in § 825 of this title or in this chapter; provided, for a violation for which a fine or penalty is not listed, the fine shall be one hundred dollars ($100);

(b) Impoundment of the vehicle pursuant to the provisions of the Taxicab and Passenger Vehicle for Hire Impoundment Act of 1992, effective March 16, 1993 (D.C. Law 9-199; D.C. Official Code § 50 -331)(2001);

(c) License suspension, revocation, or non-renewal; and

(d) Any combination of the sanctions listed in this subsection.

Copies of the proposed rulemaking can be obtained at www.dcregs.dc.gov or by contacting Dena C. Reed, General Counsel and Secretary to the Commission, District of Columbia Taxicab Commission, 2041 Martin Luther King, Jr., Avenue, S.E., Suite 204, Washington, D.C. 20020. All persons desiring to file comments on the proposed rulemaking action should submit written comments via e-mail to dctc@dc.gov or by postal mail or hand delivery to the DC Taxicab Commission, 2041 Martin Luther King, Jr., Ave., S.E., Suite 204, Washington, D.C. 20020, Attn: Dena C. Reed, General Counsel and Secretary to the Commission, not later than thirty (30) days after the publication of this notice in the *D.C. Register*.

DISTRICT OF COLUMBIA TAXICAB COMMISSION
NOTICE OF PROPOSED RULEMAKING

The District of Columbia Taxicab Commission, pursuant to the authority set forth in D.C. Official Code § 47-2829(e)(2001) and sections (8)(b)(1) (C), (D), (E), (F), (G), (I). (J), and 20a of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(b)(1)(C), (D), (E), (F), (G), (I), (J) and 50-320)(2001)), hereby gives notice of its intent to adopt amendments to Chapter 11 (Taxicab Commission Fund Assessments) of Title 31 (Taxicab and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

The proposed amendments will: 1) incorporate statutory amendments to section 20a of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code § 50-320(2001)), made by the section 6041 of the Fiscal Year 2010 Budget Support Act of 2009, effective March 3, 2010 (DC Law 18-111; 57 DCR 181(January 8, 2010)), which expanded the pool of public vehicle operators that are subject to the fifty dollar ($50) payment to the District of Columbia Taxicab Commission Fund (Assessment Fund) by including operators of both taxicabs and public vehicles for hire; 2) place accounting responsibility for the assessment fund in the Chief Financial Officer; and 3) update the purposes for which the assessment funds may be used by the Commission.

The Taxicab Commission hereby gives notice of its intent to issue final rules in not less than thirty (30) days after the publication of this notice in the *D.C. Register*.

Chapter 11, TAXICAB COMMISSION FUND ASSESSMENTS, of title 31, TAXICAB AND PUBLIC VEHICLES FOR HIRE, of the DCMR is amended as follows:

Section 1100, PURPOSE, is amended as follows:

Subsection 1100.1 is amended to read as follows:

1100.1 The purpose of this chapter is to establish procedural and substantive rules governing assessments levied against taxicab operators and passenger vehicle for hire operators as provided for in section 20a of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code § 50-320 (2001)).

Section 1101, ASSESSMENT OF TAXICAB OPERATORS, is amended to read as follows:

1101 ASSESSMENT OF TAXICAB OPERATORS AND PASSENGER VEHICLE FOR HIRE OPERATORS

1101.1 Effective February 1, 1991, and September 30, 2010, respectively, each taxicab operator and each passenger vehicle for hire operator licensed by the Commission shall be assessed fifty dollars ($50) per year upon the issuance or renewal of each

operator license identification (Face) card issued pursuant to D.C. Official Code § 47-2829(e) and (h)(2001).

1101.2 The assessment levied pursuant to § 1101.1 shall be paid by each taxicab operator and each passenger vehicle for hire operator licensed by the Commission in addition to the annual license fee authorized pursuant to D.C. Official Code § 47-2829(e) and (h)(2001).

1101.3 The Office of Taxicabs (Office) shall collect the assessment levied at the time of the issuance or renewal of the operator license identification (Face) card of each taxicab operator and each passenger vehicle for hire operator.

1101.4 The Office shall have deposited into the District of Columbia Taxicab Commission Fund (Fund), established pursuant to section 20a of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code § 50-320(a)(2001)), all assessments collected from taxicab operator and passenger vehicle for hire operators licensed by the Commission.

1101.5 On an annual basis, or at other times as directed by the Commission, the Office of the Chief Financial Officer shall provide a written report to the Commission of all monies collected and deposited in the Fund.

Section 1102, USE OF ASSESSMENT FUND, is amended as follows:

Subsection 1102.1 is amended to read as follows:

1102.1 Monies in the Fund shall be used by the Commission to pay the costs of the Commission, including the costs of operating and administering programs, investigations, proceedings, and inspections, and costs for improving the District's taxicab fleet.

Copies of the proposed rulemaking can be obtained at www.dcregs.dc.gov or by contacting Dena C. Reed, General Counsel and Secretary to the Commission, District of Columbia Taxicab Commission, 2041 Martin Luther King, Jr., Avenue, S.E., Suite 204, Washington, D.C. 20020. All persons desiring to file comments on the proposed rulemaking action should submit written comments via e-mail to dctc@dc.gov or by postal mail or hand delivery to the DC Taxicab Commission, 2041 Martin Luther King, Jr., Ave., S.E., Suite 204, Washington, D.C. 20020, Attn: Dena C. Reed, General Counsel and Secretary to the Commission, not later than thirty (30) days after the publication of this notice in the *D.C. Register*.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING
Z.C. Case No. 11-05
(Text Amendment to § 1805 to Permit General Office Use on the Second Floor of Building 173 in the Southeast Federal Center on an Interim Basis)

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2008 Repl.)), hereby gives notice of its intent to amend § 1805.9 of the Zoning Regulations (Title 11 DCMR).

Subsection 1805.9 of the Zoning Regulations governs the permitted uses within the SEFC/W-0 Zone District. If adopted, the amendment would permit general office use of the second floor of Building 173, a historic building in the Southeast Federal Center. General office use is not currently permitted in the SEFC/W-0 Zone District. The use will be permitted for an interim period of twenty (20) years.

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

The following rulemaking action is proposed:

Chapter 18, SOUTHEAST FEDERAL CENTER OVERLAY DISTRICT, § 1805, SEFC/W-0 ZONE DISTRICT, § 1805.9 is amended by adding the sentence, "The second story of Building 173 may be used for general office purposes on an interim basis of not more than twenty (20) years from the date of the initial Certificate of Occupancy for this use; provided that any such office space is suitably designed for future occupancy by retail uses and to not adversely impact ground floor retail uses." so that the provision reads as follows:

1805.9 The gross floor area of existing Building 173 shall not count toward any FAR computation. The second story of Building 173 may be used for general office purposes on an interim basis of not more than twenty (20) years from the date of the initial Certificate of Occupancy for this use; provided that any such office space is suitably designed for future occupancy by retail uses and to not adversely impact ground floor retail uses.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001. Copies of this proposed rulemaking action may be obtained, at cost, by writing to the above address.

OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Chief Procurement Officer of the District of Columbia (CPO), pursuant to the authority set forth in sections 204 and 1106 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code §§ 2-351.01, *et seq.*(Supp. 2011))(Act), hereby gives notice of the adoption of the following emergency rules and of the intent to adopt final rulemaking to add a new chapter 14 of title 27, Contracts and Procurement, of the District of Columbia Municipal Regulations. This rulemaking establishes regulations for the use of electronic transactions in the District's contracting and procurement process.

Without these emergency rules, the Office of Contracting and Procurement cannot implement new electronic technological capabilities for the procurement of goods, services and construction under the Act. Adoption of these emergency rules is therefore necessary for the immediate preservation of the public safety and welfare in accordance with section 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-505(c)(2006 Repl.)).

The emergency rules were adopted on June 10, 2011, and became effective immediately. The emergency rules will remain in effect for up to one hundred twenty (120) days after the date of adoption or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first. The CPO gives notice of intent to take final rulemaking action in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Title 27, CONTRACTS AND PROCUREMENT, of the DCMR is amended by adding a new chapter 14 to read as follows:

CHAPTER 14

USE OF ELECTRONIC COMMERCE

1400 GENERAL PROVISIONS

1400.1 The District shall accomplish the purposes of this title by using electronic commerce whenever practicable.

1400.2 The use of the terms in this title commonly associated with paper transactions (for example, "typewritten", "copy", "document", "signed in ink", "written legibly", "page", "postmark", "envelope") shall be deemed to include their electronic analogues and shall not be interpreted to discourage the use of electronic commerce.

1400.3 As a condition of participation in an electronic transaction, the Director may require potential bidders and offerors to:

(a) Register with the District, and any other entity designated by the District, before participating in an electronic transaction; and

(b) Agree to the terms, conditions, or other requirements of an electronic transaction, or to agree to terms and conditions governing the electronic transaction, such as procedures that the District may use to attribute, authenticate, or verify the accuracy of an electronic offer or the actions that constitute an electronic signature.

1400.4 Contracting officers may allow the use of other media, including but not limited to hard copies of drawings, specifications, or bid samples, to supplement electronic submissions to meet the requirements of the electronic transaction.

1401 ELECTRONIC SOLICITATIONS

1401.1 Each electronic solicitation shall comply with the requirements of this title and the District of Columbia Procurement Practices Reform Act of 2010, effective April 8, 2011(D.C. Law 18-371; D.C. Official Code §§ 2-351.01, *et seq.*(Supp. 2011)), for the procurement method being utilized.

1402 FAILURE OF THE ELECTRONIC SYSTEM

1402.1 If a failure of the District's electronic system interferes with the ability of bidders or offerors to participate in an electronic transaction, the District shall amend the notice or solicitation when the electronic system becomes available to extend the date and time for receipt of electronic bids or offers.

All persons desiring to comment on the subject matter of this proposed rulemaking should submit comments, in writing, to the Chief Procurement Officer, 441 4th Street, 700 South, Washington, D.C. 20001. Comments may be sent by email to OCPRulemaking@dc.gov or may be submitted by postal mail or hand delivery to the address above. Comments must be received no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. A copy of this proposed rulemaking may be obtained at the same address.

OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Chief Procurement Officer of the District of Columbia, pursuant to the authority set forth in sections 204 and 1106 of the Procurement Practices Reform Act of 2010, effective April 8, 2011, D.C. Law 18-371, D.C. Official Code §§ 2-351.01, *et seq.*(Supp. 2011))(Act), hereby gives notice of the adoption of the following emergency rules, which add a new section to Chapter 22 (Contractors) of Title 27 (Contracts and Procurement) of the District of Columbia Municipal Regulations. This rulemaking adds a new section 2219 to Chapter 22 concerning procedures for debarring a contractor from applying for or working on any District contracts because it has received a final evaluation grade of F on a District contract.

Emergency rulemaking action, pursuant to section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c)), is necessary to allow the Office of Contracting and Procurement to debar those contractors who have already received a final evaluation grade of F on a District contract.

The Chief Procurement Officer also gives notice of intent to take final rulemaking action to adopt this amendment in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

The emergency rules will remain in effect for up to one hundred twenty (120) days from June 6, 2011, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

Chapter 22, CONTRACTORS, of Title 27, CONTRACTS AND PROCUREMENTS, of the DCMR is amended as follows:

A new section 2219 is added to read as follows:

2219 DEBARMENT PROCEEDINGS FOR UNSATISFACTORY PERFORMANCE

2219.1 Each contractor's performance shall be evaluated and graded after expiration or termination of each contract.

2219.2 A contractor may receive one (1) of the following performance grades in a final evaluation letter:

(a) A (Excellent), which shall have a numeric value of four-point-zero (4.0);

(b) C (Satisfactory), which shall have a numeric value of two-point-zero (2.0); or

(c) F (Unsatisfactory), which shall have a numeric value of zero (0).

2219.3 If a contractor receives a final grade of F on a contract, the Director shall determine a cumulative grade by averaging all of the grades that the contractor has received on the performance of its contracts for the preceding twelve (12) month period. If the average grade for the preceding twelve (12) month period equals one-point-nine (1.9) or below, that cumulative grade shall be considered a grade of F, and the Director shall initiate debarment proceedings against the contractor.

2219.4 The Director shall initiate debarment proceedings against a contractor by notifying the contractor by certified mail, return receipt requested, of the following:

(a) The contractor has received a grade of F as its cumulative grade;

(b) The contractor may, within fifteen (15) days after receipt of the notice, file a written appeal of the cumulative grade to the Director;

(c) If the contractor files a written appeal, the Director will review the cumulative grade and make a final written decision on the contractor's cumulative grade;

(d) In making its appeal, the contractor may submit in person, in writing, or through a representative, information and argument in opposition to the proposed cumulative grade of F, including any additional specific information that raises a genuine issue of fact; and

(e) If the contractor fails to file a written appeal within fifteen (15) days after receipt of the notice, the contractor will be subject to the same consequences of debarment as described in § 2212 for a one (1)-year period, which shall commence on the sixteenth (16^{th}) day after the date of the notice.

2219.5 The Director shall include a copy of the final evaluation letter and the contractor evaluation(s) which resulted in the contractor receiving a cumulative grade of F with the notice provided pursuant to § 2219.5.

2219.6 If the contractor timely files an appeal with the Director, the Director shall issue his final decision on the matter within fifteen (15) days after receipt of the contractor's appeal. The Director shall base his decision on the facts as found together with any information and argument submitted by the contractor.

2219.7 If the Director in his final decision decides not to change the contractor's cumulative grade of F, the Director shall notify the contractor by certified mail, return receipt requested. The final written decision shall include:

(a) A copy of the final written decision;

(b) Notice to the contractor of its right to appeal the final decision to the Contract Appeals Board (CAB) within thirty (30) days after receipt of the final decision;

(c) A statement that the contractor will be subject to the same consequences of debarment as described in § 2212 of this chapter for a one (1)-year period; and

(d) A statement that the debarment period shall commence on the thirty-first (31st) day after the date of the final written decision if the contractor chooses not to appeal the final decision, or the day after the CAB dismisses or denies the contractor's appeal.

2219.8 If the Director in his final decision decides to change the cumulative grade of F, the Director shall notify the contractor of his decision by certified mail, return receipt requested.

2219.9 A contractor who has received a cumulative grade of F shall remain eligible to apply for or work on any District contract until the CAB appeal process has been concluded.

2219.10 The Director shall ensure that debarred contractors are included on the consolidated list of debarred, suspended, and ineligible contractors maintained pursuant to § 2211.

All persons desiring to comment on the subject matter of this proposed rulemaking should submit comments, in writing, to the Chief Procurement Officer, 441 4th Street, 700 South, Washington, D.C. 20001. Comments may be sent by email to OCPRulemaking@dc.gov or may be submitted by postal mail or hand delivery to the address above. Comments must be received no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. A copy of this proposed rulemaking may be obtained at the same address.

OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Chief Procurement Officer of the District of Columbia (CPO), pursuant to authority granted by sections 204 and 1106 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code §§ 2-352.04 and 2-361.06 (2011 Supp.)), hereby gives notice of the adoption of the following emergency rules and of the intent to adopt final rulemaking that amends chapter 32 of title 27 (Contracts and Procurement) of the District of Columbia Municipal Regulations (DCMR). A new subparagraph 3205.1(n) will be added to authorize advance payments to the Washington Metropolitan Area Transit Authority (WMATA) for services provided to the District of Columbia.

Without these emergency rules, the District Department of Transportation (DDOT) cannot ensure WMATA's ability to provide support services as requested by DDOT to complete various infrastructure improvement projects and bridge inspections. WMATA support services are necessary to ensure the safety of DDOT personnel and contractors working on or near WMATA property and to ensure the continued safe operation of WMATA facilities during construction and inspection activities by DDOT personnel and contractors. Advance payments to WMATA will allow WMATA to provide support services to DDOT without requiring the use of funds from WMATA operating, capital improvement or rail capital budgets, which include payments and subsidies from the District of Columbia, Maryland and Virginia. Adoption of these emergency rules is therefore necessary for the immediate preservation of the public safety and welfare.

The emergency rules will remain in effect for up to one hundred twenty (120) days from June 23, 2011, the date of their adoption, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

Title 27, CONTRACTS AND PROCUREMENTS, Chapter 32, Contract Financing and Funding, are amended by adding a new subparagraph (n) to section 3205.1 to read as follows:

(n) Notwithstanding subparagraphs (a) through (g) above, the contracting officer may authorize advance payments to the Washington Metropolitan Area Transit Authority (WMATA) for support services provided by WMATA to the District Department of Transportation (DDOT) for construction projects or other activities conducted by or on behalf of DDOT on or near WMATA property. WMATA support services shall include, but not be limited to, the provision of flaggers to communicate with trains or other WMATA equipment and the provision of escorts to monitor safety conditions while work is being performed on or near WMATA property.

All persons desiring to comment on the subject matter of this proposed rulemaking should submit comments, in writing, to the Chief Procurement Officer, 441 4th Street, N.W., 700 South, Washington, D.C. 20001. Comments may be sent by email to OCPRulemaking@dc.gov or may be submitted by postal mail or hand delivery to the address above. Comments must be received no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. A copy of this proposed rulemaking may be obtained at the same address.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF EMERGENCY and PROPOSED RULEMAKING
Z.C. Case No. 11-16
(Z.C. Case No. 11-16 (Office of Planning – Text Amendment to § 721.3)

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in sections § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2008 Repl.)) and the authority set forth in section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2006 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to § 721.3(k) to exempt firearms retail sales establishments located in District law enforcement or licensing agencies from complying with the radius limitations of that provision. This would permit a retail sales establishment use at a District law enforcement agency located within three hundred feet (300 ft.) of a Residence (R) or Special Purpose (SP) Zone District; or a church or other place of worship, a public or private school, a public library, or a playground.

The request for emergency action was made by the Office of Planning on behalf of the Deputy Mayor for Public Safety in response to the recent inability of District residents to purchase hand guns for self-defense within their homes.

There is at present no location within the District for the lawful purchase of hand guns. Until recently, District residents were able to purchase hand guns from out of state dealers holding a federal firearm license (FFL), which were then transferred into the District through a District business also holding an FFL. This District FFL is required to physically receive the firearm from outside the District and then provide it to the licensed owner. Pursuant to federal law, this is the only means that purchased hand guns may be transferred between states or between a state and the District.

According to the Deputy Mayor, the sole District FFL engaged in processing the transfer of handguns from out of state into the District recently lost the use of his location and ceased operations. Attempts to relocate have thus far proved unsuccessful because his expenses at potential eligible locations will likely exceed expected revenues for this low volume business.

The District has identified locations within District agencies that could serve as the location for this business that could be offered at an affordable rate, but none meet the radius requirements of § 721.3 (k). For instance, 300 Indiana Avenue, N.W., the existing location where residents bring their handguns to the Metropolitan Police Department for registration, is within three hundred feet (300 ft.) of a Special Purpose Zone. Only by adopting this relatively narrow exemption on an emergency basis can the District assist in the reestablishment of a District FFL business. Once that occurs, District residents, who purchased hand guns from an out-of-state FFL, will again be able to register those hand guns for self-defense in their District homes. The Commission, therefore, accepts the Deputy Mayor's conclusion that the immediate adoption of this amendment is necessary for the "immediate preservation of public ... safety." D.C. Official Code § 505 (c) (2001).

This emergency rule was adopted on July 14, 2011, and became effective on that date.

The Commission also gives notice of its intent to take final rulemaking action to adopt the following amendments to the Zoning Regulations in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register* or thirty (30) days following referral of this amendment to the National Capital Planning Commission, whichever occurs last.

The emergency rule will expire on November 11, 2011, which is the one hundred twentieth (120^{th}) day after the adoption of the rule, or upon the publication of a Notice of Final Rulemaking in the *Register*, whichever occurs first.

The proposed amendments to the Zoning Regulations are as follows:

Title 11 of the District of Columbia Municipal Regulations, ZONING, Chapter 7, COMMERCIAL DISTRICTS, § 721, USES AS A MATTER OF RIGHT (C-2), § 721.3, is amended by inserting the phrase ", other than an establishment located at a District law enforcement or licensing agency," after the phrase "provided that no portion of the establishment", so that the entire section reads as follows:

721.3 In addition to the uses permitted in C-1 Districts by § 701.4, the following retail establishments shall be permitted in a C-2 District as a matter of right:

(a) Antique store or shop;

(b) Auction house;

(c) Automobile accessories sales, including installations;

(d) Automobile and truck sales;

(e) Boat or other marine sales;

(f) Department store;

(g) Display stand or store for mail order sales;

(h) Drive-in type restaurant;

(i) Dry goods store;

(j) Fast food establishment or food delivery service, only in a C-2-B or C-2-C District; provided:

(1) No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a Residence District, unless separated therefrom by a street or alley;

(2) If any lot line of the lot abuts an alley containing a zone district boundary line for a Residence District, a continuous brick wall at least six feet (6 ft.) high and twelve inches (12 in.) thick shall be constructed and maintained on the lot along the length of that lot line;

(3) Any refuse dumpsters 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 a Residence District; and

(4) The use shall not include a drive-through. Subparagraphs (1) and (2) shall not apply to a fast food establishment located in Square 5912.

(k) Firearms retail sales establishments, provided that no portion of the establishment, other than an establishment located at a District law enforcement or licensing agency, shall be located within three hundred feet (300 ft.) of:

(1) A residence (R) or Special Purpose (SP) District; or

(2) A church or other place of worship, public or private school, public library, or playground.

(l) Furniture store;

(m) Home furnishings sales;

(n) Ice sales;

(o) Leather goods store;

(p) Musical instruments and accessories sales;

(q) Office supplies and equipment sales;

(r) Optical goods store;

(s) Precision instrument sales; and

(t) Prepared food shop, except that in a C-2-A District, a prepared food shop with greater than eighteen (18) seats for patrons shall only be permitted by special exception pursuant to 11 DCMR § 712.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 210-S, Washington, D.C. 20001. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2011-118
July 14, 2011

SUBJECT: Delegation of Rulemaking Authority to the Director of the Department of Human Services

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(6) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(6) (2010 Supp.), and section 205 of the District of Columbia Public Assistance Act of 1982 (Act), effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-202.05(c)), it is hereby **ORDERED** that:

1. The Director, Department of Human Services, is delegated the Mayor's authority to promulgate rules pursuant to section 205 of the Act (D.C. Official Code § 4-202.05(c)).

2. **EFFECTIVE DATE:** This Order shall become effective immediately.

Vincent C. Gray
VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith
CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2011-119
July 14, 2011

SUBJECT: Delegation of Rulemaking Authority for DC One Card Fees

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(6) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code §§ 1-204.22(6) and (11)), and pursuant to section 1001 *et seq.* of the Technology Services Support Act of 2009 ("Act"), effective March 3, 2010 (D.C. Law 18-111; 57 DCR 181), it is hereby **ORDERED** that:

1. The Chief Technology Officer of the Office of the Chief Technology Officer is delegated authority to administer the Act which authorizes a nonrefundable fee of $5.00 for replacement of any DC One Card that contains an electronic chip.

2. The Chief Technology Officer is delegated authority to promulgate rules pursuant to section 1004 of the Act.

3. The authority delegated herein to the Chief Technology Officer may be further delegated by that person to subordinates under his or her jurisdiction.

4. This Order shall supersede all pre-existing Orders to the extent of any inconsistency.

5. **EFFECTIVE DATE**: This Order shall become effective immediately.

Vincent C. Gray
VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith
CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
INVESTIGATIVE AGENDA

WEDNESDAY, JULY 27, 2011
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On July 27, 2011, at 4:00 pm, the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed "to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations."

1. Case#11-CMP-00273 Armand's Chicago Pizzeria, 226 MASSACHUSETTS AVE NE Retailer C Restaurant, License#: ABRA-075464

---

2. Case#11-CMP-00276 Hyatt Regency Washington, 400 NEW JERSEY AVE NW Retailer C Hotel, License#: ABRA-075037

---

3. Case#11-251-00212 Heritage India Brassiere & Lounge, 1337 CONNECTICUT AVE NW Retailer C Restaurant, License#: ABRA-075074

---

4. Case#11-CMP-00274 Redrocks, 1036 PARK RD NW Retailer C Restaurant, License#: ABRA-075299

---

5. Case#10-PRO-00178 Green Island Cafe/Heaven & Hell (The), 2327 18TH ST NW Retailer C Tavern, License#: ABRA-074503

---

6. Case#11-251-00206 Lucky Strike, 701 7TH ST NW C Retailer C Nightclub, License#: ABRA-073809

---

7. Case#11-251-00219 Current Sushi, 1215 CONNECTICUT AVE NW Retailer C Tavern, License#: ABRA-077883

---

8. Case#11-251-00190 Mc Faddens, 2401 PENNSYLVANIA AVE NW A Retailer C Restaurant, License#: ABRA-060591

---

9. Case#11-CMP-00293 Jandara, 2606 CONNECTICUT AVE NW Retailer C Restaurant, License#: ABRA-025795

---

10. Case#11-251-00205 Rock N Roll Hotel, 1353 H ST NE Retailer C Tavern, License#: ABRA-072777

---

11. Case#11-251-00197 Marrakesh Palace Pasha Lounge, 2147 P ST NW Retailer C Tavern, License#: ABRA-060695

---

12. Case#11-251-00207 Stadium, 2127 QUEENS CHAPEL RD NE Retailer C Nightclub, License#: ABRA-082005

---

13. Case#11-CMP-00087 The Reserve, 1426 L ST NW Retailer C Restaurant, License#: ABRA-082699

---

14. Case#11-251-00201 Eye Bar/Garden of Eden, 1716 I ST NW Retailer C Tavern, License#: ABRA-083133

---

15. Case#11-251-00210 Fruit Bat/Church & State, 1236 H ST NE Retailer C Tavern, License#: ABRA-083822

---

16. Case#11-251-00165 Bar Louie, 701 7th ST NW Retailer C Restaurant, License#: ABRA-084428

---

17. Case#11-251-00204 Lotus, 1420 K ST NW Retailer C Nightclub, License#: ABRA-075162

---

18. Case#11-251-00216 Lotus, 1420 K ST NW Retailer C Nightclub, License#: ABRA-075162

---

19. Case#11-251-00228 Lotus, 1420 K ST NW Retailer C Nightclub, License#: ABRA-075162

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSE CANCELLATION

WEDNESDAY, JULY 27, 2011
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

The Board is requested to cancel the following licenses for the reasons outlined below.

ABRA – 16501 – **Uptown Cathay** – CR – 5016 Connecticut Avenue, NW. [The Enforcement Division has determined that the establishment is out of business after numerous attempts to inspect the licensed premises and the Licensing Division is unable to establish either verbal or written communication with the Licensee.]

ABRA – 71935 – **Uni A Sushi Place** – CT – 2122 P Street, NW. [The Enforcement Division has determined that the establishment is out of business after numerous attempts to inspect the licensed premises and the Licensing Division is unable to establish either verbal or written communication with the Licensee.]

ABRA – 22062 – **Chuck's Market** – B – 2601 Sherman Avenue, NW. [The Enforcement Division has determined that the establishment is out of business after numerous attempts to inspect the licensed premises and the Licensing Division is unable to establish either verbal or written communication with the Licensee.]

ABRA – 80774 – **Gori Cafe** – CR – 119 V Street, NW. [The Enforcement Division has determined that the establishment is out of business after numerous attempts to inspect the licensed premises and the Licensing Division is unable to establish either verbal or written communication with the Licensee.]

ABRA – 72764 – **Vegetate** – CR – 1414 9th Street, NW. [The Enforcement Division has determined that the establishment is out of business after numerous attempts to inspect the licensed premises and the Licensing Division is unable to establish either verbal or written communication with the Licensee.]

ABRA – 60023 – **T Street Market** – B – 80 T Street, NW. [The Enforcement Division has determined that the establishment is out of business after numerous attempts to inspect the licensed premises and the Licensing Division is unable to establish either verbal or written communication with the Licensee.]

ABRA – 78871 – **Young Won** – Wholesaler A – 1336 5th Street, NE. [The Enforcement Division has determined that the establishment is out of business after numerous attempts to inspect the licensed premises and the Licensing Division is unable to establish either verbal or written communication with the Licensee.]

ABRA – 16516 – **Federal Market** – B – 1215 23rd Street, NW. [The Enforcement Division has determined that the establishment is out of business after numerous attempts to inspect the licensed premises and the Licensing Division is unable to establish either verbal or written communication with the Licensee.]

ABRA – 26137 – **J. Finley Wilson Memorial Lodge No. 1371** – Club C – 1217 Good Hope Road, SE. [The Enforcement Division has determined that the establishment is out of business after numerous attempts to inspect the licensed premises and the Licensing Division is unable to establish either verbal or written communication with the Licensee.]

ABRA – 16058 – **Iron Gate Inn Restaurant** – CR – 1734 N Street, NW. [The Enforcement Division has determined that the establishment is out of business after numerous attempts to inspect the licensed premises and the Licensing Division is unable to establish either verbal or written communication with the Licensee.]

ABRA – 70775 – **Porters** – CT – 1207 19th Street, NW. [The Enforcement Division has determined that the establishment is out of business after numerous attempts to inspect the licensed premises and the Licensing Division is unable to establish either verbal or written communication with the Licensee.]

ABRA – 60434 – **Amekor Liquors** – A – 4838 Bening Road, SE. [The Enforcement Division has determined that the establishment is out of business after numerous attempts to inspect the licensed premises and the Licensing Division is unable to establish either verbal or written communication with the Licensee.]

ABRA – 079273 – **Arisu** – CR – 1734 Wisconsin Avenue, NW. [License fees remain outstanding and an Order to Cease and Desist has been issued.]

ABRA – 085898 – **Artisa Kitchen, LLC** – Caterers – 1390 V Street, NW. [License fees remain outstanding and an Order to Cease and Desist has been issued.]

ABRA – 081996 – **Buka Restaurant** – DR – 1413 H Street, NE. [License fees remain outstanding and an Order to Cease and Desist has been issued.]

ABRA – 079352 – **Café Salsa** – DR – 1712 14th Street, NW. [License fees remain outstanding and an Order to Cease and Desist has been issued.]

ABRA – 076741 – **Club Venus** – CR – 15 K Street, NE. [License fees remain outstanding and an Order to Cease and Desist has been issued.]

ABRA – 023558 – **El Salvadoreno** – CR – 3548 14th Street, NW. [License fees remain outstanding and an Order to Cease and Desist has been issued.]

ABRA – 082824 – **Gail's Vegetarian Catering** – Caterer – 11307 Elkin Street. [License fees remain outstanding and an Order to Cease and Desist has been issued.]

ABRA – 077701 – **Inti Peruvian Restaurant** – CR – 1825 18th Street, NW. [License fees remain outstanding and an Order to Cease and Desist has been issued.]

ABRA – 082078 – **Locolat Cafe** – Caterer – 1781 Florida Avenue, NW. [License fees remain outstanding and an Order to Cease and Desist has been issued.]

ABRA – 077503 – **Nafka Restaurant** – CR – 2010 9th Street, NW. [License fees remain outstanding and an Order to Cease and Desist has been issued.]

ABRA – 075702 – **Regal Cuisine, LLC** – Caterer – 216 P Street, NW. [License fees remain outstanding and an Order to Cease and Desist has been issued.]

ABRA – 074106 – **Sabores** – CR – 3433 Connecticut Avenue, NW. [License fees remain outstanding and an Order to Cease and Desist has been issued.]

ABRA – 083244 – **Zola Wine and Kitchen** – Caterer – 505 9th Street, NW. [License fees remain outstanding and an Order to Cease and Desist has been issued.]

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
AGENDA

WEDNESDAY, JULY 27, 2011 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review of Change of Hours Application to change Hours of Operation and Hours of Alcoholic Beverage Sales. ***Current Hours of Operation and Hours of Alcoholic Beverage Sales:*** Sunday closed, Monday through Saturday 9am-10pm, Friday and Saturday 9am-10pm. ***Proposed Hours of Operation and Hours of Alcoholic Beverage Sales:*** Sunday closed, Monday through Saturday 9am-12am. No pending violations. No outstanding citations/fines. Conflict with Section 1 of the Voluntary Agreement. ANC 2F. ***Barrel House***, 1341 14th Street NW Retailer A, Lic.#: 23984.*

---

2. Letter from Rebecca Medrano requesting a refund of $750 in late fees. ANC 1A. ***GALA Hispanic Theatre***, 3333 14th Street NW Retailer CX, Lic.#: 72095.

---

3. Review of Pub Crawl Application and letter from licensee for a pub crawl scheduled for September 17, 2011. No pending violations. No outstanding citations/fines. No voluntary agreement. ANC 2A. ***FoBoGro***, 2140 Florida Street NW Retailer B, Lic.#: 82431.

---

4. Review of Entertainment Endorsement Application and letter from Licensee to change Hours of Operation and Hours of Alcoholic Beverage Sales. ***Current Hours of Operation:*** Sunday 7pm-1am, Monday-Wednesday closed, Thursday 6pm-12am, Friday 6pm-3am, and Saturday 9pm-3am. ***Current Hours of Alcoholic Beverage Sales:*** Sunday 7pm-1am, Monday-Wednesday closed, Thursday 6pm-12am, Friday 6pm-3am, and Saturday 9pm-3am. ***Current Entertainment Hours:*** Thursday 9pm-12am, Friday 9pm-2am, and Saturday 9pm-3am. ***Proposed Hours of Operation:*** Sunday 6pm-1am, Thursday 6pm-12am, Friday and Saturday 6pm-3am. ***Proposed Hours of Alcoholic Beverage Sales:*** Sunday 10pm-1am, Thursday 6pm-12am, Friday and Saturday 6pm-3am. ***Proposed Entertainment Hours:*** Sunday 6pm-1am, Thursday 6pm-12am, Friday and Saturday 6pm-3am. No pending violations. No outstanding citations/fines. No voluntary agreement. ANC 7D. ***Chateau, Inc,*** 3439 Benning Road NE Retailer CR, Lic.#: 10574.*

---

5. Review of Change of Hours Application to change Hours of Operation and Hours of Alcoholic Beverage Sales. ***Current Hours of Alcoholic Beverage Sales and Hours of Alcoholic Beverage Sales:*** Monday through Saturday 9am-10pm. ***Proposed Hours of Alcoholic Beverage Sales and Hours of Alcoholic Beverage Sales:*** Monday through Saturday 9am-12am. No pending violations. No outstanding citations/fines. No voluntary agreement. ANC 2F. ***Continental Wine & Liquor***, 1100 Vermont Ave NW Retailer A, Lic.#: 60039.*

---

6. Review of Summer Garden Application for 48 seats. ***Proposed Summer Garden Hours of Operation and Hours of Alcoholic Beverage Sales:*** Sunday through Thursday 5pm-1am, Friday & Saturday 5pm-2am. Pending Show Cause hearing. No outstanding citations/fines. No conflict with Voluntary Agreement. ANC 1B. ***Green Island Café/Heaven & Hell (The),*** 2327 18th Street NW Retailer CT, Lic.#: 74503.*

---

7. Review of Change of Hours Application to change Hours of Operation and Hours of Alcoholic Beverage Sales. ***Current Hours of Operation and Hours of Alcoholic Beverage Sales:*** Monday through Saturday 9am-9pm. ***Proposed Hours of Operation and Hours of Alcoholic Beverage Sales:*** Monday through Saturday 9am-12am. No pending violations. No outstanding citations/fines. No voluntary agreement. ANC 5A. ***Rhode Island Liquors***, 1912 Hamlin Street NE Retailer A, Lic.#: 72215.*

---

8. Review of Change of Hours Application to change Hours of Operation and Hours of Alcoholic Beverage Sales. ***Current Hours of Operation and Hours of Alcoholic Beverage Sales:*** Monday through Saturday 10am-10pm. ***Proposed Hours of Operation and Hours of Alcoholic Beverage Sales:*** Monday through Saturday 10am-12am. No pending violations. No outstanding citations/fines. No voluntary agreement. ANC 2E. ***Towne Liquors,*** 1326 Wisconsin Ave NW Retailer A, Lic.#: 60471.*

---

9. Review of Change of Hours Application to change Hours of Alcoholic Beverage Sales. Current Hours of Alcoholic Beverage Sales: Monday through Sunday 9am-10pm. Proposed Hours of Alcoholic Beverage Sales: Monday through Sunday 9am-12am. No pending violations. No outstanding citations/fines. No voluntary agreement. ANC 2B. ***Freedom Market***, 1901 New Hampshire Ave NW Retailer B, Lic.#: 3815.*

---

10. Letter from Licensee requesting an extension of safekeeping for an additional year due to health problems. ANC 1C. ***California Liquors***, 2100 18th Street NW Retailer A, Lic.#: 5018.

---

11. Review of Change of Hours Application to change Hours of Operation and Hours of Alcoholic Beverage Sales. ***Current Hours of Operation:*** Monday through Sunday 8am-10pm. ***Current Hours of Alcoholic Beverage Sales:*** Monday through Sunday 9am-10pm. ***Proposed Hours of Operation:*** Monday through Saturday 8am-12am, Sunday 8am-10pm. ***Proposed Hours of Alcoholic Beverage Sales:*** Monday through Saturday 9am-12am, Sunday 9am-10pm. No pending violations. No outstanding citations/fines. No voluntary agreement. ANC 1A. ***Arthur's Grocery***, 3301 11th Street NW Retailer B, Lic.#: 249.*

---

12. Review of letter from Andre Barlow on behalf of Licensee requesting a correction of the licensed premise address to state "313-315 Pennsylvania Avenue, SE" and an increase in the occupancy load from 50 to 124. ***Thai Roma,*** 313 Pennsylvania Ave SE Retailer CR, Lic.#: 11596.*

---

13. Review of Application for Safekeeping pending approval of the license transfer to a new tenant. No pending violations. No outstanding citations/fines. No voluntary agreement. ANC 2B. ***Apex***, 1415 22nd Street NW Retailer CT, Lic.#: 1410.

---

14. Review of Change of Hours Application to change Hours of Alcoholic Beverage Sales. ***Current Hours of Alcoholic Beverage Sales:*** Monday through Sunday 9am-10pm. ***Proposed Hours of Alcoholic Beverage Sales:*** Monday through Sunday 9am-12am. No pending violations. No outstanding citations/fines. No conflict with voluntary agreement. ANC 1D. ***Argyle Convenient Store***, 3220 17th Street NW Retailer B, Lic.#: 9593.*

---

15. Review of Change of Hours Application to change Hours of Operation and Hours of Alcoholic Beverage Sales. ***Current Hours of Operation and Hours of Alcoholic Beverage Sales:*** Monday through Sunday 11am-12am. ***Proposed Hours of Operation and Hours of Alcoholic Beverage Sales:*** Sunday through Thursday 10:30am-2am, Friday and Saturday 10:30am-3am. No pending violations. No outstanding citations/fines. No conflict with Voluntary Agreement. ANC 2B. ***Food Corner Kabob***, 2029 P Street NE Retailer CR, Lic.#: 80108.*

---

16. Review of Change of Hours Application to change Hours of Operation and Hours of Alcoholic Beverage Sales. ***Current Hours of Operation and Hours of Alcoholic Beverage Sales:*** Monday through Saturday 10am-10pm. ***Proposed Hours of Operation and Hours of Alcoholic Beverage Sales:*** Monday through Thursday 10am-11pm, Friday & Saturday 10am-12am. No pending violations. No outstanding citations/fines. No voluntary agreement. ANC 2B. ***RoseBud Liquors***, 1711 17th Street NW Retailer A, Lic.#: 60751.*

Board's Agenda – July 27, 2011 - Page 4

17. Review of Change of Hours Application to change Hours of Operation and Hours of Alcoholic Beverage Sales. ***Current Hours of Operation:*** Monday through Saturday 7am-10pm, Sunday 10am-10pm. ***Current and Hours of Alcoholic Beverage Sales:*** Monday through Saturday 9am-10pm, Sunday 10am-10pm. ***Proposed Hours of Operation:*** Monday through Saturday 7am-12am, Sunday 10am-12am. ***Proposed and Hours of Alcoholic Beverage Sales:*** Monday through Saturday 9am-12am, Sunday 10am-12am. No pending violations. No outstanding citations/fines. No voluntary agreement. ANC 1A. ***DC Fish Carry Out,*** 3475 14th Street NW Retailer B, Lic.#: 74236.*

---

18. Review of letter, dated July 18, 2011, from ANC 6C supporting Tel'Veh's application for a new CT License. ***TEL'VEH***, 401 Massachusetts Ave NW Retailer CT, Lic.#: 87302.

---

19. Review of Twelve Restaurant & Lounge's Motion for Reconsideration of Board Order No. 2011-289 for renewal of its CT License with certain conditions. ***Twelve Restaurant and Lounge,*** 1123 H Street NE Retailer CT, Lic.#: 76366.*

---

20. Review of letter, dated July 15, 2011, from ANC 6A regarding Twelve Restaurant & Lounge's Motion for Reconsideration of Board Order No. 2011-289. ***Twelve Restaurant and Lounge,*** 1123 H Street NE Retailer CT, Lic.#: 76366.*

---

21. Review of Voluntary Agreement, dated June 29, 2011, between The Dunes and ANC 1A. ***The Dunes***, 1400 Meridian Place NW Retailer CX, Lic.#: 87074.*

---

22. Review of Voluntary Agreement, dated June 16, 2011, between Zeba Bar & Grill and ANC 1A. ***Zeba Bar &Grill,*** 3423 14th Street NW Retailer CT, Lic.#: 79449.*

*** In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

BOARD OF ELECTIONS AND ETHICS

CERTIFICATION OF ANC/SMD VACANCIES

The District of Columbia Board of Elections and Ethics hereby gives notice that there is a vacancy in one (1) Advisory Neighborhood Commission office, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

VACANT: 6C04

Petition Circulation Period: **Monday, July 25, 2011 thru Monday, August 15, 2011**
Petition Challenge Period: **Thursday**, **August 18, 2011 thru Wednesday, August 24, 2011**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

D.C. Board of Elections and Ethics
441 - 4th Street, NW, Room 250N
Washington, DC 20001

For more information, the public may call **727-2525**.

BOARD OF ELECTIONS AND EHICS

Delegation of Authority to Executive Director and General Counsel

July 6, 2011

Pursuant to D.C. Official Code § 1-1001.05(a)(14), and in accordance with existing provisions of Board Organizational Orders No. 84-1, dated January 17, 1984 and No. 89-1, dated January 6, 1989, the Board of Elections and Ethics ("the Board") hereby delegates to the Office of the Executive Director that is established within the agency the overall administrative and oversight responsibility for election-related program activities. The Executive Director shall execute the Board's personnel authority with respect to employees in the Office of the Executive Director, and shall design, establish, and maintain the organizational systems, staffing, and procedures necessary for the efficient and effective administration of elections in the District of Columbia.

Notwithstanding the foregoing, the Executive Director shall not hire or fire individuals who are, or who would be, subject to the financial disclosure filing requirements set forth in D.C. Official Code § 1-1106.02, or employees who are otherwise vested for retirement purposes, without prior review by, and written approval of, the Board. The Executive Director shall also provide management direction to the subordinate elements of the Office of the Executive Director.

The Executive Director shall not submit any budget request to the Council of the District of Columbia until after such budget request has been reviewed and approved by the Board.

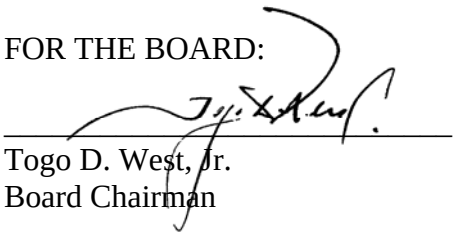
The General Counsel shall execute the Board's personnel authority with respect to employees in the Office of the General Counsel, and shall design, establish, and maintain the organizational systems, staffing, and procedures necessary for the efficient and effective performance of legal work on behalf of the Board. Notwithstanding the foregoing, the General Counsel shall not hire or fire individuals who are, or who would be, subject to the financial disclosure filing requirements set forth in D.C. Official Code § 1-1106.02, or employees who are otherwise vested for retirement purposes, without prior review by, and written approval of, the Board.

Subject to the Board's annual review, no less than 18% of the funds allocated to the Board for personnel services shall be designated annually to the Office of the General Counsel. Moreover, the Office of the General Counsel shall receive from the funds allocated to the Board's operations budget whatever amount is necessary to enable employees in the Office of the General Counsel to participate in continuing legal education programs, and other programs that would enhance the execution of legal work performed on behalf of the Board.

The Executive Director and the General Counsel shall advise the Board Members with respect to the impact of proposed policy or legislative changes on the election process

and represent the Board before the District of Columbia Council, Office of the Mayor, other government agencies, and outside organizations.
This delegation is effective upon publication in the District of Columbia Register and supersedes all previous delegations of personnel authority.

FOR THE BOARD:



July 6, 2011

Togo D. West, Jr.
Board Chairman

ELSIE WHITLOW STOKES COMMUNITY FREEDOM PCS

REQUESTS FOR PROPOSALS

The Elsie Whitlow Stokes Community Freedom Public Charter School, in compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995, hereby solicits expression of interest from contractors licensed in the District of Columbia for the following services including but not limited to:

Audit and Tax Services
Certified public accounting firms that have extensive experience in providing audit and tax services to not-for-profit District of Columbia Charter Schools. Firms will be required to audit the comparative financial statements and certain supplemental information of Elsie Whitlow Stokes, for the fiscal year ending June 30, 2011 in accordance with generally accepted auditing standards. The contract term is slated to begin in August 2011. Additional details for the request for proposals are available upon request

Development of Assessment Materials and Technological Service
Development of interim assessments in mathematics and English for grades 3-6; analysis of assessment results; identification of curriculum resources; planning guides and on-line assessment tools for teachers; and training and coaching for instructional staff.

Public Relations and Marketing Services
Public relations, marketing and communication services including but not limited to message development, branding, media relations, media training and speechwriting.

Afterschool Coordination Services
Contractors licensed in the District of Columbia for Afterschool coordination services including but not limited to program development, program management as well as maintaining communications with parent and staff.

The closing date for all services is 7/29/11 at COB.

Bids may be e-mailed to erikab@ewstokes.org.

Bids must be addressed to:

Erika Bryant
Director of Operations
Elsie Whitlow Stokes Community Freedom Public Charter School
3700 Oakview Terrace, NE
Washington, DC 20017

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2011

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, Washington, DC, intends to issue a permit (#6473) to Palace Laundry DBA Linens of the Week to operate one 25.1 MMBTU per hour natural gas and #2 fuel oil fired boiler with low NOx burners at 713 Lamont Street, NW, Washington, DC 20010.

The application to operate the boiler and the draft permit are available for public inspection at AQD and copies may be made between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments should be addressed to:

Stephen S. Ours
Chief, Permitting and Enforcement Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington D.C. 20002

No written comments postmarked after August 22, 2011 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY

John E. Hall, Acting Director, Department of Housing and Community Development (DHCD), announces a Notice of Funding Availability (NOFA) for eligible non-profit organizations and for-profit developers under the Community Development Block Grant Program (CDBG) administered by DHCD. C**ompetitive housing; community facilities; façade and small business applications will be funded under this NOFA.**

-HOUSING AND COMMUNITY FACILITIES RFP-

The District is interested in financing projects that focus on the following categories:
1) elderly housing; 2) special needs housing; 3) housing for chronically homeless individuals and families in mixed-income buildings with supportive services; 4) preservation of housing affected by expiring federal subsidies; 5) new/substantial rehabilitation of housing (5 or more units); 6) new construction and preservation of affordable housing units; and 6) community facilities.

-FAÇADE & SMALL BUSINESS ASSISTANCE RFPA-

The District will provide funding to community based non-profit organizations for DHCD's Façade Improvement Program and for its Small Business Assistance Program. In the Façade Improvement Program, non-profits will be selected to implement storefront improvement projects in targeted commercial areas. In the Small Business Assistance Program, non-profits will be selected to provide small business support services in targeted commercial areas which are intended to empower businesses and create jobs.

Both the competitive Request for Proposals (RFP) and Applications (RFPA) will be released on July 22, 2011. The RFPA and RFP packages, including all application materials and the reference guidebook, will be available in CD format and can be obtained at DHCD, 1800 Martin Luther King Jr. Avenue, S.E., Washington, D.C. 20020, 1st floor reception desk. This material will also be available from the DHCD website, www.dhcd.dc.gov, no later than July 29, 2011. For additional information, contact DHCD at (202) 442-7200.

DHCD will host pre-application conferences for potential RFPA applicants for the Façade Improvement Program and for the Small Business Assistance Program on Thursday August 4, 2011 at DHCD, 1800 Martin Luther King, Jr. Avenue, SE, 1st Floor, Housing Resource Center. The Façade Improvement Program Pre-Application Conference will be held at 10:00am and the Small Business Assistance Program Conference will be held at 2:00pm. The Housing RFP pre-application conference will also be held on August 4, 2011 at DHCD, starting at 4:00pm-6pm. All potential applicants for these programs are encouraged to attend.

Completed applications must be delivered on or before 4:00 p.m., Daylight Savings Time, Thursday, September 22, 2011, to DHCD, 1800 Martin Luther King Jr. Avenue, S.E., 2nd Floor Reception Desk, Washington, D.C., 20020.

NO APPLICATIONS WILL BE ACCEPTED AFTER THE SUBMISSION DEADLINE

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY

John E. Hall, Acting Director, Department of Housing and Community Development (DHCD), announces a Notice of Funding Availability (NOFA) for eligible non-profit and for-profit developers, making available up to $3,500,000 in Department of Mental Health (DMH) Grant funds under a Memorandum of Understand between DHCD and DMH.

The District is interested in financing projects that focus on the following categories:
1) elderly housing; 2) special needs housing; 3) housing for chronically homeless individuals and families in mixed-income buildings with supportive services; 4) preservation of housing affected by expiring federal subsidies; 5) new/substantial rehabilitation of housing (5 or more units); and 6) new construction and preservation of affordable housing units.

The competitive Request for Proposals (RFP) will be released on July 22, 2011. The RFP package, including all application materials and the reference guidebook, will be available in CD format and can be obtained at DHCD, 1800 Martin Luther King Jr. Avenue, S.E., Washington, D.C. 20020, 1st floor reception desk. This material will also be available from the DHCD website, www.dhcd.dc.gov, no later than July 27, 2011. The reference guidebook contains technical information on the DMH Grant funds program, as well as other information that may be useful in completing the application. For additional information, contact DHCD's Development Finance Division at (202) 442-7200.

Completed applications must be delivered on or before 4:00 p.m., Daylight Savings Time, Thursday, September 22, 2011, to DHCD, Development Finance Division, 1800 Martin Luther King Jr. Avenue, S.E., 2nd Floor Reception Desk, Washington, D.C., 20020.

NO APPLICATIONS WILL BE ACCEPTED AFTER THE SUBMISSION DEADLINE.

DISTRICT OF COLUMBIA HOUSING FINANCE AGENCY

BOARD OF DIRECTORS

Meeting

Tuesday, July 26, 2011
815 Florida Avenue, NW
Washington, DC

5:30 pm

AGENDA

I. Call to order and verification of quorum.

II. Consideration of DCHFA Resolution No. 2011-03(G) regarding the selection of a firm to provide repairs to the atrium of the Agency's headquarters building.

III. Executive Director's Report.

IV. Approval of minutes from the November 12, 2010 board meeting.

V. Approval of minutes from the December 14, 2010 board meeting.

VI. Other Business.

VII. Adjournment.

HOWARD ROAD ACADEMY

REQUEST FOR PROPOSALS

The Howard Road Academy PCS., invite proposals for the provision of:

1. **Special Education Legal Services Contract** for Howard Road Academy PCS

2. **Special Education Services** for all 3 campuses

3. **Modular Classrooms** at 701 Howard Road SE Washington DC 20020

4. **Operation of fruit and vegetable delivery service** to 2 campuses for a supplemental nutrition program for Howard Road Academy Public charter school(s) for the 2011-12 School Year.

Bid specifications may be obtained in person or via email from the Howard Road Business Office or by contacting Ms. Jayanthi at (202) 610-5713, and any questions regarding these bid must be submitted in writing to UJayanthi@howardroadacademy.org before the RFP deadline.

Individual Sealed Proposals (4 copies) must be received on or before **August 12th, 2011** by **2:00 pm** at Howard Road Academy Business Office, 2005 Martin Luther King Jr. Ave SE, Washington DC 20020-7101, attention to Ms. Usha Jayanthi, Chief Financial Officer.

THE INSPIRED TEACHING DEMONSTRATION PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Food Services

The Inspired Teaching Demonstration Public Charter School is advertising the opportunity to bid on the delivery of breakfast, lunch, snack and/or CACFP At Risk Supper meals to children enrolled at the school for the 2011-2012 school year with a possible extension of (4) one year renewals.

All meals must meet at a minimum, but are not restricted to, the USDA School Programs Breakfast, Lunch, Snack and At Risk Supper meal pattern requirements of the National School Lunch Program and the D.C. Healthy Schools Act.

Additional specifications outlined in the Request for Bid (RFP) such as; student data, days of service, meal quality, etc. may be obtained from Tony Taylor at tony.taylor@inspiredteachingschool.org or 202-462-1956

All bids not addressing all areas as outlined in the RFP will not be considered.

The Inspired Teaching School will receive bids from July 14th until July 28th at 6:00pm

MUNDO VERDE PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Student Meal Services

Mundo Verde Public Charter School is advertising the opportunity to bid on the delivery of breakfast, lunch, and/or snack meals to children enrolled at the school for the 2011-2012 school year with a possible extension of (4) one year renewals.

Mundo Verde PCS will receive bids until Bids until **6:00pm, August 8th, 2011**.

All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, and Snack meal pattern requirements. Additional specifications outlined in the Request for Proposals such as: student data, days of service, meal quality, etc. may be obtained from:

Anna Johnson
Operations Manager
2001 S Street, NW, 2nd Floor, Washington, DC 20009
202-630-8373
ajohnson@mundoverdepcs.org

All bids not addressing all areas as outlined in the Request for Proposal will not be considered.

THE POTOMAC LIGHTHOUSE PUBLIC CHARTER SCHOOL

REQUEST FOR BIDS

Delivery of Breakfast, Lunch, and Snacks

Will receive bids until August 5, 2011 at 1:00 pm

The Potomac Lighthouse Public Charter School located at 4401 8th Street NE, Washington DC is advertising the opportunity to bid on the delivery of breakfast, lunch, snacks to children enrolled at the school for the 2011-2012 school year with a possible extension of (4) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA School Programs Breakfast, Lunch, and Snack meal pattern requirements. Additional specifications outlined in the Request for Bid (RFP) such as; student data, days of service, meal quality, etc. may be obtained from

Mel Harper
Charter Facilities Management, LLC
1661 Worcester Road, Suite 203
Framingham, MA 01464
mharper@charterfacilities.org
508-626-0904

All bids not addressing all areas as outlined in the RFP will not be considered.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

PUBLIC NOTICE

FORMAL CASE NO. 1087, IN THE MATTER OF THE APPLICATION OF THE POTOMAC ELECTRIC POWER COMPANY FOR AUTHORITY TO INCREASE EXISTING RETAIL RATES AND CHARGES FOR ELECTRIC DISTRIBUTION SERVICE

The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to D.C. Code Sections 34-901 and 34-909, that on July 8, 2011, the Potomac Electric Power Company ("Pepco") filed an Application requesting authority to increase existing distribution service rates and charges for electric service in the District of Columbia by $42.1 million, representing an increase of approximately 10.2% in Pepco's distribution revenues. The requested rates are designed to collect $456 million in total distribution revenues. Pepco requests authority to earn an 8.64% rate of return, including a return on common equity of 10.75%.

The proposed changes in distribution rates are as follows:

	Current Rates		Proposed Rates	
Rate Schedule	Summer	Winter	Summer	Winter
Residential - Standard (R)				
Customer Charge	$ 6.65	$ 6.65	$ 10.40	$ 10.40
First 400 kilowatthours	$ 0.00737	$ 0.00737	$ 0.00852	$ 0.00852
In Excess of 400 kilowatthours	$ 0.02144	$ 0.01490	$ 0.02479	$ 0.01723
Residential - All Electric (AE)				
Customer Charge	$ 6.65	$ 6.65	$ 12.39	$ 12.39
First 400 kilowatthours	$ 0.00799	$ 0.00799	$ 0.01245	$ 0.01245
In Excess of 400 kilowatthours	$ 0.02368	$ 0.01315	$ 0.03690	$ 0.02049
Residential Time-of-Use (RTM)				
Customer Charge	$ 11.17	$ 11.17	$ 15.55	$ 15.55
Kilowatthour Charge	$ 0.04374	$ 0.04374	$ 0.04917	$ 0.04917

Rate Schedule	Current Rates Summer	Current Rates Winter	Proposed Rates Summer	Proposed Rates Winter
GS Non-Demand (GS ND)				
Customer Charge	$ 15.72	$ 15.72	$ 18.36	$ 18.36
Kilowatthour Charge	$ 0.04412	$ 0.03657	$ 0.03835	$ 0.03179
GS Low Voltage (GS LV)				
Customer Charge	$ 15.76	$ 15.76	$ 15.76	$ 15.76
Kilowatthour Charge				
First 6,000 kilowatthours	$ 0.04594	$ 0.03810	$ 0.04219	$ 0.03352
Additional kilowatthours	$ 0.02891	$ 0.01873	$ 0.04219	$ 0.03352
Kilowatt Charge				
First 25 kilowatts	$ -	$ -	$ 3.62	$ 3.60
Additional kilowatts	$ 7.73	$ 7.68	$ 3.62	$ 3.60
GS Primary (GS 3A)				
Customer Charge	$ 15.69	$ 15.69	$ 15.69	$ 15.69
Kilowatthour Charge				
First 6,000 kilowatthours	$ 0.04102	$ 0.03400	$ 0.03513	$ 0.02648
Additional kilowatthours	$ 0.02580	$ 0.01668	$ 0.03513	$ 0.02648
Kilowatt Charge				
First 25 kilowatts	$ -	$ -	$ 5.15	$ 5.11
Additional kilowatts	$ 8.08	$ 8.03	$ 5.15	$ 5.11
Temporary				
Customer Charge	$ 15.72	$ 15.72	$ 18.36	$ 18.36
Kilowatthour Charge	$ 0.06408	$ 0.05216	$ 0.06841	$ 0.05569
GT - Low Voltage (GT LV)				
Customer Charge	$ 152.73	$ 152.73	$ 178.80	$ 178.80
Kilowatthour Charge	$ 0.01101	$ 0.01101	$ 0.01234	$ 0.01234
Kilowatt Charge	$ 6.25	$ 6.25	$ 7.17	$ 7.17
GT - Primary (GT 3A)				
Customer Charge	$ 73.11	$ 73.11	$ 69.21	$ 69.21
Kilowatthour Charge	$ 0.00692	$ 0.00692	$ 0.00683	$ 0.00683
Kilowatt Charge	$ 4.20	$ 4.20	$ 4.49	$ 4.49
GT - High Voltage (GT 3B)				
Customer Charge	$ 77.89	$ 77.89	$ 20.32	$ 20.32
Kilowatthour Charge	$ 0.00032	$ 0.00032	$ 0.00000	$ 0.00000
Kilowatt Charge	$ 0.87	$ 0.87	$ 1.28	$ 1.28
Rapid Transit (RT)				
Customer Charge	$ 113.07	$ 113.07	$ 32.68	$ 32.68
Kilowatthour Charge	$ 0.00825	$ 0.00825	$ 0.00000	$ 0.00000
Kilowatt Charge	$ 3.84	$ 3.84	$ 7.87	$ 7.87

Rate Schedule	Current Rates Summer	Current Rates Winter	Proposed Rates Summer	Proposed Rates Winter
Street Lighting (SL)			The rate design for SL and TS is changed. The rates are shown below.	
Standard Night Burning	$ 0.00223	$ 0.00223		
24-Hour Burning	$ 0.00400	$ 0.00400		
Traffic Signals (TS)	$ 0.00400	$ 0.00400		
Customer Charge			$ 10.22	$ 10.22
Per Lamp Charge			$ 0.63398	$ 0.63398
Telecommunications Network (TN)				
Customer Charge w/ Meter	$ 16.20	$ 16.20	$ 13.22	$ 13.22
Customer Charge w/o Meter	$ 6.63	$ 6.63	$ 5.41	$ 5.41
Kilowatthour Charge	$ 0.01878	$ 0.01878	$ 0.01533	$ 0.01533
Street Light Maintenance	Fixed	O&M	Fixed	O&M
Overhead (SSL OH)				
Incandescent w/o globe	$ 2.098	$ 0.033	$ 2.280	$ 0.036
Incandescent w/ globe	$ 3.069	$ 0.728	$ 3.335	$ 0.791
Mercury Vapor 175 Watt	$ 6.555	$ 0.649	$ 7.124	$ 0.705
Mercury Vapor 250 Watt	$ 7.490	$ 0.658	$ 8.140	$ 0.715
Metal Halide 400 Watt	$ 25.380	$ 1.061	$ 27.581	$ 1.153
Underground (SSL UG)				
Incandescent w/globe	$ 29.512	$ 1.334	$ 32.072	$ 1.450
Mercury Vapor 250 Watt	$ 29.767	$ 1.199	$ 32.349	$ 1.303
Mercury Vapor 400 Watt	$ 34.907	$ 1.489	$ 37.935	$ 1.618
HPS 150 Watt	$ 26.102	$ 0.978	$ 28.366	$ 1.063
Metal Halide 100 Watt	$ 22.491	$ 0.880	$ 24.442	$ 0.956
Metal Halide 175 Watt	$ 25.380	$ 1.061	$ 27.581	$ 1.153
Metal Halide 400 Watt	$ 25.380	$ 1.061	$ 27.581	$ 1.153

No rate change is proposed for customers served under Residential Aid Discount Riders "RAD" and "RAD AE." Pepco proposes a new Rider "RIM" – Reliability Investment Recovery Mechanism – to recover costs for capital infrastructure investments related to maintaining or enhancing reliability of the Company's distribution system.
Pepco is also proposing a new rate design for SL and TS which consists of a Customer Charge and a Charge per Lamp which will replace the existing cents per kilowatt-hour charge.

If granted in full, the average monthly effects of the proposed rates will be:

Rate Schedule*	Average Monthly Usage	Monthly Increase Distribution Bill Only $	Monthly Increase Distribution Bill Only %	Monthly Increase for Standard Offer Service Customers Total Bill** $	Monthly Increase for Standard Offer Service Customers Total Bill** %
Residential - Standard (R)	665	4.94	22.3	4.94	5.7
Residential - All Electric (AE)	792	11.36	43.5	11.36	11.0
Residential Time-of-Use (RTM)	4,159	26.97	11.1	26.97	4.1
GS Non-Demand (GS ND)	1,259	(3.90)	(4.8)	(3.90)	(1.9)
GS Low Voltage (GS LV)	10,617	41.86	7.5	41.86	2.6
GS Primary (GS 3A)	18,037	82.00	9.8	82.00	2.7
Temporary	7,226	30.56	5.9	30.56	2.5
GT – Low Voltage (GT LV)	153,114	564.60	10.0	564.60	2.8
GT – Primary (GT 3A)	1,639,249	807.31	1.9	807.31	0.4
GT - High Voltage (GT 3B)	18,913,945	5682.39	2.6	5682.39	0.2
Rapid Transit (RT)	274,813	433.10	5.4	N/A	N/A
Street Lighting (SL) *** and Traffic Signals (TS) combined ***	NA	27,375.00	59.9	27,375.00	3.2
Telecommunications Network (TN)	904	(6.10)	(18.4)	(6.10)	(3.8)
Street Lighting Maintenance (SSL OH and SSL UG) ***	N/A	4,037.58	8.7	4,037.58	8.7

* The effect of the proposed rates on any particular customer is dependent upon the actual usage of the customer. Increases shown are for customers with the average monthly usage.

** Standard Offer Service customers purchase their electricity from PEPCO. For those customers who purchase their electricity from competitive suppliers (i.e., suppliers other than PEPCO), the dollar amounts and percentages in the Total Bill column are not applicable.

*** The Street Lighting and Traffic Signal increases shown refer to the total class.

Pepco is proposing to keep the RAD rates at the current level.

Pepco's rate filing is available for inspection at the Public Service Commission's Office of the Commission Secretary, 1333 "H" Street, NW, 2nd Floor – West Tower between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday. Copies of the Application can be purchased at the Commission at a cost of $0.10 per page, actual reproduction cost. Pepco's rate filing may also be inspected at the following public libraries:

Ward	**Name and Address**
Main	Martin Luther King Memorial Library 9th & "G" Streets, NW
Ward 1	Mount Pleasant Library 3162 Mt. Pleasant Street, NW
Ward 2	Southwest Library 900 Wesley Place, SW
Ward 3	Cleveland Park Library 3310 Connecticut Avenue, NW
Ward 4	Petworth Library 4200 Kansas Avenue, NW
Ward 5	Woodridge Library 1801 Hamlin Street, NE
Ward 6	Southeast Library 403 7th Street, SE
Ward 7	Capitol View Library 5001 Central Avenue, SE
Ward 8	Washington-Highlands Library 4037 South Capitol Street, SW

Any person desiring to intervene in the proceeding shall file a petition to intervene with the Commission no later than **August 15, 2011**. All petitions shall conform to the requirements of the Commission's Rules of Practice and Procedure as set forth in Chapter 1, Section 106 of Title 15 of the District of Columbia Municipal Regulations (15 DCMR § 106). All written comments and petitions for intervention should be sent to Mr. Jesse Clay, Acting Commission Secretary, Public Service Commission of the District of Columbia, 1333 "H" Street, NW 2nd Floor, West Tower, Washington, D.C. 20005.

Pursuant to 15 DCMR § 121, the Commission will hold a Prehearing Conference in this proceeding at **10:00 a.m.** on **September 8, 2011** in the Commission's Hearing Room, Columbia, 1333 "H" Street, NW 7th Floor, East Tower, Washington, D.C. 20005. Participants shall be prepared to discuss proposed issues and procedural schedules.

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA

APPOINTMENTS OF NOTARIES PUBLIC

Notice is hereby given that the following named persons have been newly appointed as Notaries Public in and for the District of Columbia, effective on or after August 15, 2011.

Comments on these 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 July 22, 2011. 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.

Alexander	Lakenya S.	Congressional Bank 2101 K Street, NW	20007
Avedissian	Christopher Alexander	Becker & Associates Consulting, Incorporated 2001 Pennsylvania Avenue, NW, Suite 950	20006
Baroody	Helen	Wachovia, A Wells Fargo Company 215 Pennsylvania Avenue, SE	20003
Bautista	Herson E.	PNC Bank 1100 25th Street, NW	20037
Beasley	Gwendolyn	U.S. Department of Housing and Urban Development, Office of Inspector General 451 7th Street, SW, Room 8260	20410
Beasley	Julie	Potomac Electric Power Company 701 9th Street, NW	20068
Bednash	Todd J.	Food for the Hungry 1627 K Street, NW, Suite 1000	20011
Blankenship	Debbie H.	Library of Congress Federal Credit Union 101 Independence Avenue, SE	20540
Bolz	Tiffany	Gates Hudson and Associates Community Management for Dumbarton Place Condominium 1414 22nd Street, NW	20037
Bradley	William	Bank Fund Staff Federal Credit Union 1818 H Street, NW	20433
Brooks, Sr.	Melvin S.	U.S. Department of Housing and Urban Development, Office of Inspector General 451 7th Street, SW, Room 8260	20410
Bultman	William W.	Wells Fargo 1545 Alabama Avenue, SE	20032
Burks	Whitney	Wireless Generation, Incorporated 500 New Jersey Avenue, NW, 6th Floor	20001
Chaconas	Fada	Steptoe & Johnson, LLP 1330 Connecticut Avenue, NW	20036

Cook	Gail C.	Kelley Drye & Warren 3050 K Street, NW	20007
Cotchan	Robin E.	Securities Investor Protection Corporation 805 15th Street, NW, Suite 800	20005
Cutler	Paul R.	Pro-Typists, Incorporated 3235 P Street, NW	20007
Enriquez	Karla	Library of Congress Federal Credit Union 101 Independence Avenue, SE	20540
Espejo	Peggy	HCI Equity Partners 1730 Pennsylvania Avenue, NW, Suite 525	20006
Goodman	Jared S.	Foundation to Support Animal Protection (PETA Foundation) 1536 16th Street, NW	20036
Guthrie	Joyce A.	Manatt, Phelps & Phillips, LLP 700 12th Street, NW, Suite 1100	20005
Hamlil	Meriem B.	Wachovia, A Wells Fargo Company 37 Calvert Street, NW	20007
Heischmidt	Christina Maria	Dunlap, Grubb & Weaver, PLLC 5335 Wisconsin Avenue, NW, Suite 440	20015
Herbert	Gloria Bradshaw	Zuckerman Spaeder, LLP 1800 M Street, NW, Suite 1000	20036
Hill	Linda M.	AARP 601 E Street, NW	20049
Hill	Karol	Derenberger & Page Reporting, Incorporated 1430 S Street, NW	20009
Hinchman	Alison D.	National Trust for Historic Preservation 1785 Massachusetts Avenue, NW	20036
Ishmon	Phoenix C.	CCA/Correctional Treatment Facility 1901 E Street, SE	20003
Johnson	Diane V.	WilmerHale 1875 Pennsylvania Avenue, NW	20006

Kaufman	Robert P.	Bayer & Kaufman, LLP 2011 Pennsylvania Avenue, NW, 5th Floor	20006
Kelley-McCreary	Elizabeth E.	Black Entertainment Television 1235 W Street, NE	20018
Kerr	Jeffrey S.	Foundation to Support Animal Protection (PETA Foundation) 1536 16th Street, NW	20036
Klepp	Patricia	Merrill LAD 1325 G Street, NW, Suite 200	20005
Krivonak	Leanne M.	Olender Reporting, Inc. 1100 Connecticut Avenue, NW, Suite 810	20036
Kruger	Janice	National Community Reinvestment Coalition 727 15th Street, NW, Suite 900	20005
Marcelin	Denise P.	Levine, Blaszak, Block & Boothby, LLP 2001 L Street, NW, Suite 900	20036
Mata	J. Elsie	McKenna Long & Aldridge, LLP 1900 K Street, NW, Suite 100	20006
Mayes	Thompson M.	National Trust for Historic Preservation 1785 Massachusetts Avenue, NW	20036
McKee	Chelsea Yvonne	PNC Bank 3300 14th Street, NW	20010
Mickelson	Jerome Edward	Community Preservation and Development Corporation 5513 Connecticut Avenue, NW, Suite 250	20015
Moore	Y. Esther	Latham & Watkins, LLP 555 11th Street, NW, Suite 1000	20004
Moussazadeh	Guilda	Clements Worldwide One Thomas Circle, NW, Suite 800	20005
Neal	Monique T.	Plymouth Congregational United Church of Christ 5301 North Capitol Street, NE	20011

Petruncio	Jean	Bayer & Kaufman, LLP 2011 Pennsylvania Avenue, NW, 5th Floor	20006
Phillips	Bonita M.	Cohen Mohr, LLP 1055 Thomas Jefferson Street, NW, Suite 504	20007
Raglin	Veronica E.	Self 408 21st Street, NE	20002
Raikes	Stacey	Alderson Reporting 1155 Connecticut Avenue, NW, Suite 200	20036
Rosenberger	Araceli Curiel	Latin American Youth Center 1419 Columbia Road, NW	20009
Simmons	Rita V.	Drinker, Biddle & Reath, LLP 1500 K Street, NW	20005
Smith	Aprele	Dell, Incorporated 1225 I Street, NW, Suite 300	20005
Spiezio	Nicholas J.	Enterprise Settlement Services, LLC 2176 Wisconsin Avenue, NW	20007
Starr	Michelle	Self 3732 Burnham Place, NE	20019
Stierasuta	C. Amy	Penzance 2400 N Street, NW, Suite 600	20037
Streat	E. Dexter	Self (Dual) 4349 Benning Road, NE	20019
Thompkins	Sheryl Lynette	U.S. Department of Justice 950 Pennsylvania Avenue, NW	20530
Uhar	Emily Margaret	Washington Legal Clinic for the Homeless 1200 U Street, NW, 3rd Floor	20009
Wiebler	Katherine C.	Vinson & Elkins, LLP 2200 Pennsylvania Avenue, NW, Suite 500 West	20037

UNIVERSITY OF THE DISTRICT OF COLUMBIA

BOARD OF TRUSTEES

NOTICE OF BOARD MEETINGS

THE BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA HEREBY GIVES NOTICE THAT IT WILL CONDUCT MEETINGS AS FOLLOWS:

Regular Meeting of the Board of Trustees Facilities Committee
Tuesday, July 26, 2011 – 3:30 p.m.

Planned Agenda

I. Call to Order and Roll Call

II. Building 52 and Building 38

III. Establishment of Committee Calendar

IV. Closing Remarks

**Unless otherwise indicated, all meetings are held at the University of the District of Columbia Van Ness Campus, 4200 Connecticut Avenue, NW, Building 39, 3rd Floor, Washington, DC 20008.

UNIVERSITY OF THE DISTRICT OF COLUMBIA

BOARD OF TRUSTEES

NOTICE OF BOARD MEETINGS

THE BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA HEREBY GIVES NOTICE THAT IT WILL CONDUCT MEETINGS AS FOLLOWS:

Special Meeting of the Board of Trustees
Tuesday, July 26, 2011 – 5:00 p.m.

Planned Agenda

I. Call to Order and Roll Call

II. Building 52 and Building 38

III. Board of Trustees Committee Assignments

IV. Resolution – Notice of Final Rulemaking, Amendments to Chapter 1, Incorporating Open Meetings Amendment Act of 2010 and Other Updates

V. Closing Remarks

Expected Meeting Closure
In accordance with Section 405(b) (10) of the Open Meetings Act of 2010, the Board hereby gives notice that it may conduct an executive session, for the purpose of discussing the appointment, employment, assignment, promotion, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials.

**Unless otherwise indicated, all meetings are held at the University of the District of Columbia Van Ness Campus, 4200 Connecticut Avenue, NW, Building 39, 3rd Floor, Washington, DC 20008.

WASHINGTON LATIN PUBLIC CHARTER SCHOOL

REQUESTS FOR PROPOSALS

Project Management

Washington Latin invites all interested parties to submit proposals to provide project management services for the identification, analysis, and eventual construction or renovation of a permanent facility for the school. Proposals are due no later than 12:00 PM July 27, 2011. The complete RFP can be obtained by contacting: Bob Eleby-El at belebyel@latinpcs.org.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Audit Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Audit Committee will be holding a meeting on Thursday, July 28, 2011, at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

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

DRAFT AGENDA

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

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Finance and Budget Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Finance and Budget Committee will be holding a meeting on Thursday, July 28, 2011, at 11:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

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

DRAFT AGENDA

I.	Call to Order	Committee Chairman
II.	June 2011 Finance Report	Director, Finance and Budget
III.	Agenda for September 22nd Committee Meeting	Committee Chairman
IV.	Adjournment	Committee Chairman

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Retail Water and Sewer Rates Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Retail Water and Sewer Rates Committee will be holding a meeting on Tuesday, July 26, 2011, at 11:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

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

DRAFT AGENDA

I.	Call to Order	Committee Chairman
II.	Monthly Updates	Chief Financial Officer
III.	Future Rate Strategies Update	Director Finance & Budget
IV.	Committee Workplan	Chief Financial Officer
V.	Emerging Issues/Other Business	Chief Financial Officer
VI.	Agenda for September 27, 2011 Committee Meeting	Chief Financial Officer
VII.	Adjournment	Committee Chairman

GOVERNMENT OF THE DISTICT OF COLUMBIA
ZONING COMMISSION
AND
BOARD OF ZONING ADJUSTMENT
441 4TH STREET, N.W.
SUITE 200-SOUTH
WASHINGTON, D.C. 20001

PUBLIC NOTICE OF CLOSED MEETING

In accordance with § 406 of the Open Meetings Amendment Act of 2010, notice is hereby given that the Zoning Commission and Board of Zoning Adjustment for the District of Columbia are conducting a joint closed meeting on **Tuesday, July 26, 2011 from 8:30 a.m. until 12:30 p.m**. The meeting is being conducted to allow for a training session pursuant to § 405(b)(12) of the Open Meetings Amendment Act of 2010.

If you have any questions or require any additional information relevant to the foregoing, please contact the Office of Zoning at (202) 727-6311.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Order No. 17109-C of Appeal No. 17109 of Kalorama Citizens Association, pursuant to 11 DCMR § 3100 from the administrative decision of David Clark, Director, Department of Consumer and Regulatory Affairs, from the issuance of Building Permits Nos. B455571 and B455876, dated October 6 and 13, 2003, respectively, to Montrose, LLC, to adjust the building height to 70 feet and to revise penthouse roof structure plans to construct an apartment building in the R-5-D District at 1819 Belmont Road, N.W., Washington, D.C., and from the issuance of the original Building Permit No. B449218, dated March11, 2003.

HEARING DATES: February 17, March 9 and 16, April 6 and 20, 2004

DECISION DATES: June 22, 2004, December 7, 2004, and February 1, 2005, December 6, 2005, July 20, 2010, and April 5, 2011

DECISION AND ORDER AFTER REMAND

Background

On November 10, 2003, the Kalorama Citizens Association ("KCA") filed this appeal with the Office of Zoning ("OZ") alleging that Building Permits Nos. B455571, B455876, and B449218, all pertaining to construction at 1819 Belmont Road, N.W. ("subject property"), were issued erroneously by the Department of Consumer and Regulatory Affairs ("DCRA"). The Board of Zoning Adjustment ("BZA" or "Board") held a properly noticed hearing on the appeal, as well as several decision meetings, and at the final decision meeting on February 1, 2005, decided to partially grant and partially deny the appeal.

The Board's decision was memorialized in Board Order No. 17109, dated November 8, 2005, which granted the appeal on the grounds that the height of the building with the roof deck exceeded the height limitations of the Height Act of 1910 (36 Stat. 452, D.C. Official Code §§ 6-601.01 – 6-601.09 (2001)), but denied the appeal with respect to the penthouse setback requirements under both the Height Act and the Zoning Regulations, and with respect to the floor area ratio ("FAR") calculations. Order No. 17109-A, dated April 4, 2006, denied KCA's request for reconsideration of certain aspects of the Board's decision, including whether a sixth level area denoted as "attic" space on the plans would be more properly characterized as a "mezzanine" or "balcony," thus requiring its inclusion in FAR calculations.

KCA appealed to the District of Columbia Court of Appeals ("Court") that part of Order No. 17109 which denied its BZA appeal with respect to the FAR calculations. On appeal to the Court, KCA's arguments as to the FAR issue went to two areas of the FAR calculations. As to the first – whether the basement was properly measured for the purposes of these calculations – the Court upheld the Board's order. The second issue before the Court was whether the Board

had adequately explained its apparent conclusion that the sixth level of the building is an "attic," making the space potentially not countable towards FAR. The Court found that the Board had not, and remanded the case for the Board to resolve the issue. Because the Zoning Regulations do not contain a definition for the term "attic," the Court concluded that, pursuant to 11 DCMR § 199.2(g), the Board must determine whether the space falls within one of the three sub-definitions of "attic" set forth in *Webster's Unabridged Dictionary ("Webster's Dictionary").*

Because the Court held that the Board did not address the attic issue with sufficient particularity, it also held that the Board had not accorded Advisory Neighborhood Commission ("ANC") 1C, the ANC within which the subject property is located, the great weight to which it is entitled pursuant to D.C. Official Code § 1-309.10(d) (2001). Therefore, the case was also remanded for the Board to make specific findings with respect to the ANC's concern that the sixth level does not fall within the definition of "attic" and to explain why the Board does or does not agree with the ANC.

On June 14, 2010, the Board issued a Procedural Order to the parties permitting them to file legal memoranda, based on the record as it existed on the date Order No. 17109 was issued, analyzing the applicability of each of the three sub-definitions of "attic" to the space at issue, and drawing conclusions as to the effect on FAR calculations. The Procedural Order also stated that the Board would not revisit the Board holding that the space provided structural headroom of less than six feet, six inches, which is the second element that must be satisfied for attic space to be excluded from FAR. Finally, the Order indicated that the Board would deliberate on the attic issue at a special public meeting on July 20, 2010.

At the special public meeting on July 20th, the Board deliberated on the attic issue and decided that the space denoted as "attic space" on the original plans submitted with the application is indeed attic space because it falls within the third sub-definition. Since the Board had already concluded that the space provided structural headroom of less than six feet, six inches, the Board reaffirmed its conclusion that the space was properly excluded from the FAR computation and therefore again denied that portion of the appeal.

The Board members participating in this remand did not personally hear the evidence in this case. When that is the case, D.C. Official Code § 2-509(d) (2001) provides that no order adverse to a party may be issued until a proposed order has been served upon the parties, who then must given an opportunity to present written exceptions. Therefore, at its public meeting on January 4, 2011, the Board voted to send a proposed order to the parties and established a deadline for any exceptions and responses to be filed. The Appellant timely filed exceptions with the Board on February 4, 2011. (Exhibit 110.) DCRA filed a Response to those exceptions (Exhibit 112), and the Appellant filed a Reply to DCRA's Response (Exhibit 113). Based on its exceptions, the Appellant asked the Board to revise this Order to conclude that the sixth level of the building is

not an "attic," but a floor of the building whose square footage must be included in the FAR calculations.

At its public meeting on April 5, 2011, the Board discussed the Appellant's exceptions and voted, 4-0-1, to issue the order as proposed, except for an inclusion of its explanation why it found the exceptions to be unpersuasive. That discussion appears at the end of this Order's Conclusions of Law. The order has also been revised to clarify that its Findings of Facts and Conclusions of Law are based exclusively upon what was in the plans before the Zoning Administrator at the time he cleared the building permit application for zoning review.

This Order, No. 17109-C, reflects the Board's Findings of Fact and Conclusions of Law only on the two issues remanded by the Court – the attic issue and ANC great weight – and incorporates by reference Order No. 17109. This Order, therefore, will not restate all facts concerning the subject property, but only those relevant to the remand issues, and if a relevant factual finding also appeared in Order No. 17109, it is so noted herein.

FINDINGS OF FACT

1. The plans submitted with the application depict a five-story building plus basement, with each story approximately 10 feet high. The plans also depict a sixth level of the building that is six feet, five and one-quarter inches high to the ceiling. (Exhibit 107, Attached Plans.)

2. The plans denote the sixth level as an "attic."

3. The sixth level of the subject building provides less than six feet, six inches of structural headroom. (*See*, Finding of Fact No. 31 in Order No. 17109).

4. The plans show "collar ties" forming part of the unfinished "ceiling" of the building's sixth level which are part of the building's structural members and are placed six feet, five and one-quarter inches above that level's floor.

5. "Collar tie" is defined by *Webster's Dictionary* as "a board used to prevent the roof framing from spreading or sagging."

6. The plans show no finished ceiling to the sixth level because interspersed among the collar ties and ceiling rafters of the sixth level is open space; therefore, there is no full ceiling or floor between the floor of the sixth level and the roof of the building.

7. The collar ties depicted in the plans are part of the roof framing. They secure the roof rafters and work to brace the building against racking in a north-south direction. (*See*, Finding of Fact No. 32 in Order No. 17109.)

8. As depicted on the plans, the sixth level of the building is at least partially within the roof framing of the building.

9. Because the plans show no finished ceiling to the sixth level, all of that level would be immediately below the roof of the building. Part of the roof of the building is flat and the sixth level is just below it. Part of the roof of the building is peaked, and there would be an open area between the sixth-level ceiling rafters/collar ties and the peaked roof.

CONCLUSIONS OF LAW

The calculation of "gross floor area" of a building includes only attic space that provides "structural headroom of six feet, six inches (6ft., 6 in.) or more." (11 DCMR § 199.1, definition of "Gross floor area.") In Order No. 17109, the Board stated its determination that the sixth level does not provide structural headroom of at least six feet, six inches. (Order No. 17109, at 14.) In that Order, however, the Board failed to specifically find whether the sixth level was an attic. This omission prompted a remand from the Court of Appeals with instructions that the Board determine whether the sixth level fell within one of the three sub-definitions of "attic" in *Webster's Dictionary*. The Board now holds that the sixth level is an attic, and specifically falls within the third sub-definition.

Section 199.2 of the Zoning Regulations ("Regulations") directs the Board to *Webster's Unabridged Dictionary* for words not defined by the Regulations themselves. (11 DCMR § 199.2.) "Attic" is not defined by the Regulations, so the Board turns to the tripartite definition of "attic" in the most current version of *Webster's Unabridged Dictionary* set out below:

> a. a low story or wall above the main order or orders of a façade in the classical styles;
>
> b. a room or rooms behind an attic;
>
> c. the part of a building immediately below the roof and wholly or partly within the roof framing: a garret or storage space under the roof.

(*Webster's Unabridged Third New International Dictionary*). Sub-definition (b) does not provide any illumination of the question before the Board and is somewhat difficult to interpret as it uses the word being defined in the definition.

Sub-definition (a) is more helpful, and may or may not apply to the sixth level of the subject building. There is some question as to its precise meaning, and as to the nature of a "façade in the classical styles."

Sub-definition (c), however, provides the Board with an understandable, workable definition of "attic" within which the sixth level of the subject building clearly falls. Sub-definition (c) has two parts to it, both of which apply to the sixth level here. First, an attic is "the part of the building immediately below the roof." The sixth level is immediately below the roof. This is evident under the flat-roofed part of the building, where the roof is at the top of the sixth level. It is less clear under the peaked-roof part of the building because immediately above the ceiling rafter/collar ties at the top of the sixth level is an open space that varies in height due to the peak of the roof. (*See*, Exhibit 107, Attachment 3 (relevant page of plans).)

Under the peaked-roof area, the floor of the sixth level is further from the roof of the building than it is under the flat-roofed area. Under the peak, the sixth level floor is anywhere from approximately eight feet, five and one-quarter inches[1] to 16 feet, five and one-quarter inches[2] below the roof of the building. There is nothing on the relevant page of the plans that indicates a finished ceiling between the floor of the sixth level and the peaked roof of the building. (Exhibit 107, Attachment 3.) Therefore, the sixth level is not less "immediately below the roof" in the peaked-roof area than in the flat-roofed area, making the whole open area between the sixth level floor and the roof "immediately below the roof," thus satisfying the first part of sub-definition (c).

The second part of sub-definition (c) states that an attic is "wholly or partly within the roof framing." The sixth level of the subject building as shown on the plans includes the collar ties which help stabilize the building. They were not proposed for ornamental purposes, but are structural members of the building's skeleton.[3] The collar ties are interspersed with the ceiling rafters of the sixth level, but this "ceiling" is, essentially, unfinished, with open spaces among the rafters and collar ties. The collar ties form the base of the triangle the other two sides of which are the sloping sides of the peaked roof. The Board considers the whole triangle, including its base, to be part of the roof framing. The collar ties are, therefore, structural members which are part of the roof framing, making the sixth level "within the roof framing," thus satisfying the second part of sub-definition (c).

The third part of sub-definition (c) comes at the end, after a colon, and essentially provides two examples of what the first two parts of the definition try to define. It is not necessary that the sixth level actually fit either category, but in this case it does. The examples given are of "a

[1]This number is derived by adding the height of the sixth level -- six foot, five and one-quarter inches -- plus the two feet between the ceiling rafters/collar ties and the low point of the peaked roof.

[2] This number is derived by adding the height of the sixth level -- six feet, five and one-quarter inches -- plus the 10 feet or so to the top of the peak.

[3]Board Order No. 17109, at 14, states that "structural" is defined by *Webster's Dictionary* as "of or relating to the load bearing members or scheme of a building, as opposed to the screening or ornamental elements."

garret or storage space under the roof." The sixth level of the subject building is exactly that – a garret or storage space under the roof. A "garret" is defined by *Webster's Dictionary* as "(1) an unfinished part of a house immediately under or within the roof: loft – compare ATTIC, (2) a room on the top floor of a house." The sixth level would be an unfinished part of the building just under the roof and within the roof framing, and thus falls within garret definition number one.

ANC 1C filed a submission with the Board on December 2, 2003 (Exhibit 20) supporting the appeal and stating that the sixth level is not an attic under the dictionary definition or any commonly accepted sense of the term. The ANC claimed that the labeling of the sixth level as an attic was a "subterfuge" to avoid counting in FAR calculations space that it claims is intended to be used for human habitation. (Exhibit 20, at 3.) For all of the reasons set forth above, the Board disagrees with the ANC's position that the sixth level as depicted on the plans is not an attic. The Board instead finds that the proposed sixth level falls within the third sub-definition of "attic" enunciated in *Webster's Dictionary*. And, as noted by the Court, the issue of habitability is not relevant to whether a space is or is not an attic.[4]

Discussion of Exceptions

The Appellant took exception to several of the Findings of Fact and Conclusions of Law set forth in the-then Proposed (now Final) Order. (Exhibit 110.) The Appellant claimed that Finding of Fact No. 6 and the first sentence of Finding No. 9 were not based on substantial evidence in the record. Taken together, Finding No. 6 and the first sentence of No. 9 discuss the absence of a finished ceiling to the sixth level, and find that, due to the lack of such a finished ceiling, all of the sixth level is "immediately below the roof of the building." The Appellant's exception states that the Board, in the final analysis, failed to rely on what was shown on the plans, and instead, based its decision on whether the sixth level had a finished ceiling either during construction, or, alternatively, after construction of the building was complete. The Appellant states that "[i]t is axiomatic that what controls in such a dispute are the plans for the completed project as permitted, not the physical configuration of the project at various stages of completion." (Exhibit 110, at 3.)

The Board agrees with the Appellant in principal, but disagrees in substance. The Board agreed that its principal focus should be on the plans before the Zoning Administrator at the time the building permit was being reviewed for zoning compliance. In fact the plans do not authorize a finished ceiling between the floor of the sixth level and the building's roof.

Looking at the relevant sheet of the originally-submitted plans, attached to Exhibit 107, there is no indication that a finished ceiling was to be installed above the sixth level of the building. Since a building may only be constructed in accordance with the plans approved by DCRA, this

[4] *Kalorama Citizens Association v. D.C. Bd. of Zoning Adjustment*, 934 A.2d at 407 (D.C. 2007).

Board can only conclude that the building permit did not authorize the construction of a finished ceiling at this level. The Appellant cites the testimony of the developer's representative as to whether there exists a finished ceiling to the sixth level, but, as conceded by the Appellant, this testimony is not controlling as to the issue. (Exhibit 110, at 2.) What is controlling are the plans, and the Board does not read the plans to show a finished ceiling. All that a constructed ceiling would prove is unlawful construction, which is an enforcement issue not before the Board.

The Appellant's next exception alleges that Findings of Fact Nos. 7 and 8 are not supported by substantial evidence, claiming that there is no support for the findings that either the collar ties or the sixth level are at least partially within the roof framing. The Board has already found that the collar ties are structural members of the building and this finding was not at issue in the remand. The collar ties, as part of the structure of the building, and not merely ornamental, must be part of the structure of some aspect of the building, and, in fact, they are part of the roof framing. They are not found distributed throughout the building, but only at the top of the sixth level, under the flat roof and forming the base of the triangle made by the peaked roof. The whole triangle, including its base, are part of the roof framing; therefore, the Board maintains its finding that the collar ties and the sixth level are at least partially within the roof framing.

The Appellant last takes exception with the Board's conclusion that the sixth level is a "garret." This exception relies on the Appellant's three earlier conclusions that the sixth level is not immediately under the roof, but under its own ceiling, that it is not within the roof framing, and that its ceiling is finished. But the Board disagrees with all of these conclusions. *Webster's Dictionary* definition of "attic" uses the word "garret" as an example of what is defined, essentially as a synonym for "attic." The definition of "garret" itself is "an unfinished part of a house immediately under or within the roof." (*See,* definitions set forth below.) The Board reiterates that the sixth level is an unfinished part of the building immediately under the roof, and so qualifies as a garret. But, in any event, it is not necessary that the sixth level actually be a garret, as long as it falls within one of the three sub-definitions of "attic."

Lastly, contrary to the Appellant's implication (Exhibit 110, at 5-6), any evidence of habitability is not relevant to the Board's determination that the sixth level is an attic. *Kalorama Citizens Association v. D.C. Bd. of Zoning Adjustment,* 934 A.2d 393, 407 (D.C. 2007).

CONCLUSIONS

On remand the Board concludes that the sixth level of the subject building is an attic. Having already concluded that the space has less than six feet, six inches of structural headroom, the area was properly excluded by the Zoning Administrator from the calculation of the gross floor area of the building. Therefore, the building does not exceed the maximum floor area ratio permitted in this R-5-D Zone District. Accordingly, the Board affirms its denial of Appeal No. 17109 with respect to the FAR calculations.

BZA APPEAL NO. 17109-C
PAGE NO. 8

VOTE TO AFFIRM REMANDED PORTION OF APPEAL:

3-0-2 (Meridith H. Moldenhauer, Konrad W. Schlater, and Shane L. Dettman to affirm. No other Board members participating)

VOTE TO ISSUE AN ORDER ADVERSE TO A PARTY:

4-0-1 (Meridith H. Moldenhauer, Nicole C. Sorg, Jeffrey L. Hinkle, and Konrad W. Schlater to issue; No other Board member (vacant) participating)

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

FINAL DATE OF ORDER: June 15, 2011

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Order No. 17509-B of Application of Bernard L. Renard, Motion for a Two-Year Extension of BZA Order No. 17509, pursuant to 11 DCMR § 3130. The original application was pursuant to 11 DCMR § 3104.1, for a special exception to allow an addition to one of two row dwellings sharing the same lot proposed for subdivision under § 223, not meeting the minimum width requirements for an open court (§ 406.1) or the maximum percentage of lot occupancy limitations (§ 403) and under § 3103.2, for a variance from the minimum lot width requirements under § 401 in the R-4 District at premises 521-523 11th Street, S.E. (Square 973, Lot 67) (site per sub).[1]

HEARING DATES (Orig. Application):	September 19, 2006, January 30, 2007, and May 22, 2007
DECISION DATE (Orig. Application):	May 22, 2007
FINAL DATE OF ORDER (Order No. 17509):	June 11, 2007
DECISION ON 2009 MOTION TO EXTEND ORDER:	March 24, 2009
DATE OF ORDER ON 2009 MOTION (Order No. 17509-A):	April 8, 2009
DECISION ON 2011 MOTION TO EXTEND ORDER:	July 12, 2011

SUMMARY ORDER ON MOTION TO EXTEND THE VALIDITY OF BZA ORDER NO. 17509

The Underlying BZA Order

On May 22, 2007, the Board of Zoning Adjustment ("Board" or "BZA") approved the Applicant's request for a special exception to allow an addition to one of two row dwellings sharing the same lot proposed for subdivision under § 223 of the Zoning Regulations, not meeting the minimum width requirements for an open court (§ 406.1) or the maximum percentage of lot occupancy limitations (§ 403) and under § 3103.2, for a variance from the minimum lot width requirements under § 401 in the R-4 District at premises 521-523 11th Street, S.E. (Square 973, Lot 67) (site per sub). On June 11, 2007, the Office of Zoning ("OZ") filed in the record and served upon the parties an order approving Application No. 17509. Pursuant to 11 DCMR §§ 3125.5 and 3125.9, the order became "final" on that date and took effect 10 days later. (Exhibit 43.)

Extension of the BZA Order Pursuant to a Waiver Under § 3100.5

Subsection 3130.1 of the Board's Rules of Practice and Procedure provides in part that:

[1] The original application was amended to include a request for a special exception under § 223 as well as a request for area variance relief. (*See*, Order No. 17509.) Although this request for extension was described as being to Order No. 17509-A, in fact the request was to extend the underlying order, Order No. 17509, and the relief granted in that order.

> No order of the Board authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years … unless, within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit.

(11 DCMR § 3130.1.)

Although the provision does not specify whether the two-year period begins on the date the order became final or when it took effect, the Board has traditionally used the former as the start date. Therefore, Order No. 17509 would have expired on June 11, 2009 unless building permits were applied for on or before that date.

On or about March 13, 2009, the Applicant filed a letter with the Board requesting an extension of the validity of Order No. 17509.

Because the Zoning Regulations did not, at that time, contain a provision expressly authorizing the BZA to extend the validity of an order past the two-year limit set forth in § 3130.1, the Applicant requested the Board to waive that provision. Concerning the request to extend the order, the Board granted the waiver requested pursuant to 11 DCMR § 3100.5. This provision authorizes the Board to waive many of its rules, including § 3130.1, upon a showing of good cause shown, if the waiver would not prejudice the rights of any party, and the waiver was not otherwise prohibited by law. In this case, the Board found that the criteria under § 3100.5 had been satisfied and, through the issuance of Order No. 17509-A, the Board extended the validity of the underlying order for a period not to exceed two years, thus making the new expiration date for Order No. 17509 June 11, 2011.

Motion to Extend Validity of Order Pursuant to 11 DCMR § 3130.6

On or about May 9, 2011, the Board received a letter from the Applicant, which requested, pursuant to 11 DCMR § 3130.6, a two-year extension in the authority granted in Order No. 17509. The Applicant is requesting a two-year extension in the authority granted in that order because, due to the deterioration of the real estate market in Washington, D.C., the frozen credit markets, and the continuing economic crisis these have caused, together with recently enacted regulations applicable to Fannie Mae and similar agencies, all of which obstacles are outside of the Applicant's control, the Applicant has been unable to obtain all of the necessary financing commitments to begin the project, despite attempts to do so since the Board originally approved it. (Exhibits 49, 51, and 52.)

Procedural Issues

After the issuance of Order No. 17509-A granting the waiver, but prior to the filing of the new request, the Zoning Commission ("Commission") adopted amendments to § 3130 to specifically authorize the Board to extend the time limits of § 3130.1. *Z.C. Order No. 09-01*, 56 DCR 4388 (June 5, 2009). Among other things, the new provisions allowed for

only one extension of an order (§ 3130.6). The rules also addressed the question of whether an order would remain valid if the Board was unable to decide a request prior to its expiration date. The rules provide that an order's expiration would be tolled if an extension request was filed at least 30 days prior to the expiration date (§ 3130.9).

As to the criteria for granting a request, new § 3130.6 (c) requires the demonstration of good cause through substantial evidence of one or more of the following criteria:

(1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control;

(2) An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or

(3) The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control.

The first question for the Board was whether the Applicant was barred from making his request due to the language in § 3130.6 which expressly allows the Board to grant only one extension.[2] The Board finds that the prior extension is not counted towards this limit. As explained above, the new regulation was not in effect as of the final date of the order granting the 2009 request for an extension. Section 6(A) of the District of Columbia Administrative Procedure Act, D.C. Official Code § 2-502 (6)(A), defines a rule to mean the "whole or any part of any Mayor's or agency's statement of general or particular applicability *and future effect*" (emphasis added). Therefore, the limit of one extension stated in the new rule was prospective only, so that the prior extension does not count towards this limit.

The Merits of the Request to Extend the Validity of the Order Pursuant to § 3130.6

The Board finds that the motion has met the criteria in § 3130.6 to extend the validity of the underlying order. To meet the burden of proof under 11 DCMR § 3130.6, the Applicant submitted a letter dated May 9, 2011, that described his efforts and difficulties in obtaining financing, together with another letter dated March 29, 2011, from CitiMortgage to the Applicant containing a response to his request to have a portion of the property released from the existing mortgage, and a copy of an Application for Release of Security, dated April 27, 2011. The Applicant indicated in the May 9th letter that his project has not substantially changed, but has been temporarily stalled due to his inability to secure sufficient project financing resulting from the current economic and financial market conditions beyond his control. He noted that he has sought financing for several years from numerous banks and other financial institutions, but has been unable to refinance the existing mortgage. The Applicant stated that he has applied for financing over the last two years, but the applications have been denied, for the reason that they fall under the new, more restrictive rules that govern since the financial crisis. He explained how under Fannie Mae's new regulations, were he to pay off the mortgage now secured

[2] This limitation also may be waived pursuant to § 3100.5.

by both properties prior to subdivision so as to secure a new mortgage on only one property, or on each of the two subdivided properties, it would be deemed a "cash out" transaction that currently is not allowed. The Applicant added that under current financial market conditions, most banks are only providing mortgages for investment properties that can be sold to Fannie Mae or other like agencies, i.e., the Fannie Mae "1-4" investment properties program, and that few banks are even participating in the Fannie Mae "5-10" investment properties program. Since the Applicant owns more than four properties, he does not qualify for the Fannie Mae program in which most banks participate. He has applied for refinancing at his current mortgage holder, and his application is pending and expected to take several months for processing. An extension of the underlying order is needed to allow the project to be completed, given the delay the Applicant has encountered in obtaining financing. (Exhibits 49 and 51.) The Applicant also noted that despite being unable to secure the necessary financing, he has continued to prepare building permit drawings and apply for building permits. (Exhibits 49, 51, and 52.)

The Office of Planning ("OP"), by memorandum dated July 5, 2011, reviewed the application for the extension of the orders for "good cause" pursuant to § 3130.6 and did not voice any objections to the motion. (Exhibit 53.) The project is within the boundaries of Advisory Neighborhood Commission ("ANC") 6B. The Applicant served the ANC with the motion to extend. No reply to the application for extension was submitted by the ANC.

The Board found that the Applicant has met the criteria set forth in § 3130.6. The reasons given by the Applicant were beyond the Applicant's reasonable control within the meaning of § 3130.6(c)(3) and constitute the "good cause" required under § 3130.6(c)(1). In addition, as required by § 3130.6(b), the Applicant has demonstrated that there is no substantial change in any of the material facts upon which the Board based its original approval in Order No. 17509. The motion for a time extension was served on all the parties to the application and those parties were given 30 days in which to respond under § 3130.6(a).

As required by § 3130.6(b), there is no substantial change in any of the material facts upon which the Board based its original approval. In requesting this extension, the Applicant's plans for development of the site would be substantially unchanged[3] from those approved by the Board in Order No. 17509 (Exhibit No. 38 in the record). There have been no changes to the Zone District classification applicable to the property or to the Comprehensive Plan affecting this site since the issuance of the Board's Order.

Neither the ANC nor any party to the application objected to an extension of the Order. The Board concludes that the extension of that relief is appropriate under the current circumstances.

[3] OP noted in its report that there is a minor change to the development plan being proposed to reduce the building height of the proposed addition by two feet. (Exhibit 53.)

Pursuant to 11 DCMR § 3130, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of Case No. 17509 for a two-year time extension of Order No. 17509, which Order shall be valid until June 11, 2013, within which time the Applicant must file plans for the proposed structures with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit.

VOTE: 4-0-1 (Meridith H. Moldenhauer, Nicole C. Sorg, Lloyd J. Jordan, and Jeffrey L. Hinkle to Approve; No Zoning Commission member participating or voting.)

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 19, 2011

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Order No. 17600-B / 17606-C of:

Application of Dakota Square LLC, Motion of Fort Totten North,[1] pursuant to 11 DCMR § 3130.6, for a Two-Year Extension of BZA Order No. 17600;
and
Application of Dakota Points LLC, Motion of Fort Totten South,[2] pursuant to 11 DCMR § 3130.6, for a Two-Year Extension of BZA Order No. 17606-A

Original Application No. 17600 was pursuant to 11 DCMR § 3103.2, for a variance from the loading berth requirements under § 2201.1, to allow the construction of a mixed-use (commercial/residential) building in the C-2-A District at premises 300-320 Riggs Road, N.E. (Square 3748, Lot 52).

HEARING DATE (Orig. Application):	March 20, 2007
DECISION DATE (Orig. Application):	March 20, 2007
FINAL DATE OF ORDER (Order No. 17600):	March 21, 2007
DECISION ON 2009 MOTION TO EXTEND ORDER:	March 24, 2009
DATE OF ORDER ON 2009 MOTION (Order No. 17600-A)	April 7, 2009
DECISION ON 2011 MOTION TO EXTEND ORDER:	April 12, 2011

Original Application No. 17606 was pursuant to 11 DCMR § 3104.1, for a special exception from the roof structure uniform height provisions under § 411, to construct a four-story residential building in the C-2-A District at premises 5545-5549 South Dakota Avenue, N.E. (Square 3760, Lot 10) and 5553-5575 South Dakota Avenue, N.E. (Parcel 137/86).

HEARING DATE (Orig. Application):	May 8, 2007
DECISION DATE (Orig. Application):	May 8, 2007
FINAL DATE OF ORIGINAL ORDER (Order No. 17606):	May 9, 2007
FINAL DATE OF CORRECTED ORDER (Order No. 17606-A):	May 9, 2007
DECISION ON 2009 MOTION TO EXTEND ORDER:	March 24, 2009
DATE OF ORDER ON 2009 MOTION (Order No. 17606-B):	April 7, 2009
DECISION ON 2011 MOTION TO EXTEND ORDER:	April 12, 2011

ORDER ON MOTIONS TO EXTEND THE VALIDITY
OF
BZA ORDER NOS. 17600 AND 17606-A

[1] Fort Totten North is the successor in interest to Dakota Square LLC.
[2] Fort Totten South is the successor in interest to Dakota Points LLC.

This order concerns a motion filed pursuant to 11 DCMR § 3030.6 to extend the validity of BZA Order Nos. 17600 and 17606-A. The joint motion was filed by the successors in interest to the Applicants in the original orders. These successor entities will hereafter be referred to collectively as "the Developers."

For the reasons stated below, the Board of Zoning Adjustment ("Board" or "BZA") grants the request. In doing so, the Board is issuing a single order that consolidates the two approvals for the sole purpose of establishing a single expiration date of May 9, 2013; which is two years from the most recent expiration date of Order 17606-A. This is being done because the two orders both concern the same project and the Board wishes to allow the Developers the greatest amount of time to apply for building permits. In all other respects, these remain separate approvals. Among other things, that means that each order retains its own separate requirement that a building permit for the structure approved therein be applied for by the new expiration date. The expiration of one order due to the failure of one of the Developers to file for a building permit by May 9, 2013, will not affect a successful vesting of the other order.

Underlying BZA Orders

On March 21, 2007, the Office of Zoning ("OZ") filed in the record and served upon the parties an order approving Application No. 17600 for a variance from the loading berth requirements under § 2201.1 of the Zoning Regulations. Pursuant to 11 DCMR §§ 3125.5 and 3125.9, the order became "final" on that date and took effect 10 days later.

On May 9, 2007, OZ filed in the record and served upon the parties an order approving Application No. 17606 for a special exception from the roof structure requirements of § 411 of the Zoning Regulations. However, because of a minor error in the caption of this order, the Board issued a corrected summary order to accurately reflect that the proposal was for a four-story residential building, and not a four-unit residential building. The corrected order was in all other respects identical to BZA Order No. 17606, including its final date of May 9, 2007 (BZA Order No. 17606-A).

First Extensions of the BZA Orders

Subsection 3130.1 of the Board's Rules of Practice and Procedure provides in part that:

> No order of the Board authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years … unless, within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit.

Although the provision does not specify whether the two-year period begins on the date the order became final or when it took effect, the Board has traditionally used the former as the start date.

Therefore, Order No. 17600 would expire on March 21, 2009 and Order No. 17606-A would expire on May 9, 2009 unless building permits were applied for on or before those dates.

On or about March 6, 2009, counsel for the original Applicants in Applications 17600 and 17606 filed two letters with the Board requesting extensions of the validity of Orders Nos. 17600 and 17606-A.

Because the Zoning Regulations did not, at that time, contain a provision expressly authorizing the BZA to extend the validity of an order past the two-year limit set forth in § 3130.1, the Applicants requested that the Board waive that provision. In addition, because Order No. 17600 was likely to expire before the BZA could act on the request, and because Title 11 was silent on the subject, the applicant in that case specifically requested that the "Board toll the expiration date of the underlying Order from the date the motion to extend was filed." *Application No. 17600-A of Dakota Square LLC,* 56 DCR 2995 (2009). In response, the Board found "that the expiration was tolled at the time the Applicant's motion was filed." *Id.*

Concerning the request to extend the orders, the Board granted the waiver requested pursuant to 11 DCMR § 3100.5. That provision authorizes the Board to waive many of its rules, including § 3130.1, upon a showing of good cause shown, if the waiver would not prejudice the rights of any party, and the waiver was not otherwise prohibited by law. In each instance, the Board found that the criteria under § 3100.5 had been satisfied and, through the issuance of Order Nos. 17600-A and 17606-B, the Board extended the validity of each underlying order for a period not to exceed two years. The new expiration date for Order No. 17600 was March 21, 2011 and the new expiration date for Order No. 17606-A was May 9, 2011.

Second Request for Extensions of the BZA Orders

On or about March 8, 2011, OZ received a second request to extend the expiration of each order. (17600, Exhibit 39; 17606, Exhibit 44.)

The motion asserted that the Developers were unable to proceed with their building permit applications due to the "protracted reconstruction of the adjacent intersection by the District Department of Transportation ("DDOT"), coupled with ongoing negative economic circumstances." (17600, Exhibit 39; 17606, Exhibit 44.)

The Office of Planning ("OP") submitted a report supporting the requests and agreeing with the basis asserted. OP specifically stated:

> The reconstruction of South Dakota Avenue and Riggs Road was originally proposed to be completed in the fall of 2009, but work did not begin until the spring of 2010. Completion is now anticipated to occur in September 2011, at the earliest. The condition of the roadways, including lane closures, makes it difficult

for the applicant to access the site with its construction vehicles. These factors are all beyond the applicant's reasonable control.

(17600, Exhibit 40; 17606, Exhibit 45.)

Procedural Issues

After the issuance of the orders granting the waivers, but prior to the filing of the new requests, the Zoning Commission ("Commission") adopted amendments to § 3130 to specifically authorize the Board to extend the time limits of § 3130.1. *Z.C. Order No. 09-01*, 56 DCR 4388 (June 5, 2009). Among other things, the new provisions allowed for only one extension of an order. (11 DCMR § 3130.6.) The rules also addressed the question of whether an order would remain valid if the Board was unable to decide a request prior to its expiration date. The rules provide that an order's expiration would be tolled if an extension request was filed at least 30 days prior to the expiration date. (11 DCMR § 3130.9.)

As to the criteria for granting a request, new § 3130.6(c) required the demonstration of good cause through substantial evidence of one or more of the following criteria:

(1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control;

(2) An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or

(3) The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control.

1. <u>May the Board grant a second extension of the orders?</u>

The first question for the Board was whether the Developers were barred from making their requests due to the language in § 3130.6 which expressly allows the Board to grant only one extension.[3] The Board finds that the prior extension is not counted towards this limit. As explained above, the new regulation was not in effect as of the final date of the orders granting the first requests for an extension. Section 6(A) of the District of Columbia Administrative Procedure Act, D.C. Official Code § 2-502 (6)(A), defines a rule to mean the "whole or any part of any Mayor's or agency's statement of general or particular applicability *and future effect*" (emphasis added). Therefore, the limit of one extension stated in the new rule was prospective only, so that the prior extension does not count towards this limit.

[3] This limitation also may be waived pursuant to § 3100.5.

2. Should the Board waive the 30-day filing prerequisite to toll Order No. 17600-A's expiration?

Subsection 3130.9 reads as follows:

> A request for a time extension filed at least thirty (30) days prior to the date upon which an order is due to expire shall toll the expiration date for the sole purpose of allowing the Board to consider the request.

The flip side of this rule is that if a request to extend an order is filed less than 30 days before the order's expiration date, the order will expire unless the Board grants the request before that date.

In this instance, the request to extend both orders was filed on March 8, 2011. Order No. 17606-B was not due to expire until May 9, 2011, and the Board voted to grant the request on April 12th, well before expiration would have occurred. Therefore, there was no need to toll the expiration date.

However, just as happened in the first extension request to extend Order No. 17600, the second request was not filed in sufficient time to allow the Board to decide the case before expiration. As noted, the Commission adopted § 3130.9 to expressly permit the tolling of an order if a request is filed at least 30 days before expiration. In doing so, the Commission modified the precedent established in Order No. 17600-A that allowed tolling to occur no matter how close to the expiration date the request was filed. Nevertheless, the Developer claims to have not understood the meaning of § 3130.9 and, having not complied with it, seeks a waiver from its time limit. Since the request was filed before the order's expiration, the Board is willing to retain jurisdiction over the order to consider the request. As already noted, the Applicant must demonstrate good cause, the absence of prejudice, and that no law prohibits the waiver.

As to good cause, the Applicant states it found § 3130.9 confusing and did not read it as being at all relevant to the Board's jurisdiction to decide requests to extend facially expired orders. While the Board does not find § 3130.9 to be unclear in any way, it recognizes the relative newness of the provision and that the Board in Order No. 17600-A expressly ruled that the filing of the prior request less than 30 days before order expiration automatically tolled its expiration. Clearly, the Commission's adoption of § 3130.9 modified that precedent by requiring that time extension requests be filed at least 30 days prior to an order's expiration date in order for tolling to occur. The Board will honor this intent going forward and will not consider any future request to waive § 3130.9 based upon its purported ambiguity. With that *caveat* made, the Board finds good cause under these unique circumstances.

As to the remaining elements for a waiver, the Board concludes that merely maintaining the *status quo* to permit the Board to consider the merits of the extension prejudices no one. The Board further concludes that there is no law precluding granting the waiver. The Board therefore waives the 30-day filing prerequisite to the tolling of the expiration date of Order No. 17600-A "for the sole purpose of allowing the Board to consider the request." (11 DCMR § 3130.9.)

The Merits of the Request to Extend

The Board finds that the motion has met the criteria in § 3130.6 to extend the validity of the two orders. The failure to file for the two building permits was due largely to the protracted reconstruction of the adjacent intersection by DDOT. This factor was beyond the Developers' reasonable control within the meaning of § 3130.6(c)(3) and constitutes the "good cause" required under § 3130.6(c)(1). In addition, as required by § 3130.6(b), the Developers have demonstrated that there is no substantial change in any of the material facts upon which the Board based its original approval in Order No. 17600 or Order No. 17606-A.

Pursuant to 11 DCMR § 3130, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of Case Nos. 17600 and 17606 for a two-year time extension of Order Nos. 17600 and 17606-A, which Orders shall be valid until May 9, 2013, within which time the Applicant must file plans for the proposed structures with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit.

VOTE: **4-0-1** (Meridith H. Moldenhauer, Nicole C. Sorg, Jeffrey L. Hinkle, and Michael G. Turnbull to Approve; No other Board member (vacant) 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: July 19, 2011

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18230 of 1813-1815 M Street, LLC, pursuant to 11 DCMR § 3104.1, for a special exception from the rear yard requirements under subsection 774.2, to allow a third floor addition to an existing building serving a restaurant use in the DC/C-3-C District at premises 1813 M Street, N.W. (Square 139, Lot 73).

Note: The Board amended the originally requested relief from a variance from the rear yard requirements under subsection 774.1, to a special exception under subsection 774.2, allowing a waiver of the rear yard requirements.

HEARING DATE: July 12, 2011
DECISION DATE: July 12, 2011

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 2B, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2B, which is automatically a party to this application. ANC 2B submitted a letter in support of the application. The Office of Planning ("OP") submitted a report and testified at the hearing in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under subsection 774.2. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 774.2, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions

of law. It is therefore **ORDERED** that this application (pursuant to Exhibit 12 – Plans) be **GRANTED.**

VOTE: **4-0-1** (Meridith H. Moldenhauer, Lloyd J. Jordan, Nicole C. Sorg, Jeffrey L. Hinkle and Greg M. Selfridge to APPROVE)

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

FINAL DATE OF ORDER: July 19, 2011

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, 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 § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, 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. 18251 of MM Washington Redevelopment Partners LLC, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the lot area requirements under subsection 401.3, and a special exception from the roof structure requirements under subsection 411.11, to allow the renovation and conversion of a vacant building last used as a public school into an apartment house in the R-4 District at premises 27 O Street, N.W. (Square 616, Lot 866).

Note: The Board determined at the public hearing that a variance from the apartment conversion requirements under subsection 330.5(e) of the Zoning Regulations was not required in this case.

HEARING DATE: July 12, 2011
DECISION DATE: July 12, 2011

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case is self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission ("ANC") 5C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5C, which is automatically a party to this application. ANC 5C submitted a report in support of the application. The Office of Planning ("OP") submitted a report in support of the application.

Variance Relief:

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for a variance from §401.3. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party. Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking a variance from §401.3, the applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief:

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of

proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception relief under § 411. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party. Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 411, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

The Applicant is also granted the flexibility to modify the design of the building to address any comments from the D.C. Historic Preservation Review Board during final review of the project, so long as the modifications do not require any additional areas of zoning relief.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED.**

VOTE: **5-0-0** (Nicole C. Sorg, Meridith H. Moldenhauer, Jeffrey L. Hinkle, Lloyd J. Jordan and Greg M. Selfridge to APPROVE.)

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

FINAL DATE OF ORDER: July 19, 2011

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, 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 § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, 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. 18253 of Thomas Eichenberger and Marian Wiseman, pursuant to 11 DCMR § 3104.1, for a special exception to allow a rear addition to a one-family row dwelling under section 223, not meeting the court (section 406) and nonconforming structure (subsection 2001.3) requirements in a R-4 District at premises 213 – 8th Street, N.E. (Square 917, Lot 84).

DECISION DATE: July 12, 2011 (Expedited Calendar)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

Pursuant to 11 DCMR § 3181 this application was tentatively placed on the Board's expedited calendar for decision without hearing as a result of the applicant's waiver of their right to a hearing.

The Board provided proper and timely notice of the decision meeting for this application together with the information required by 11 DCMR § 3118.5 by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (ANC) 6A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6A, which is automatically a party to this application. The ANC submitted a letter in support of the application. The Office of Planning (OP) submitted a report in support of the application.

No objections to expedited calendar consideration were made by any person or entity entitled to do by §§ 2118.6 and 2118.7 and no requests for party status were received. The matter was therefore called on the Board's expedited calendar for the date referenced above and the Board voted to grant the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 223. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit 12 – Plans) be **GRANTED.**

VOTE: **4-0-1** (Meridith H. Moldenhauer, Nicole C. Sorg, Lloyd J. Jordan and Jeffrey L. Hinkle to APPROVE)

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

FINAL DATE OF ORDER: July 19, 2011

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, 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 § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, 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,

APPLICATION NO. 18253
PAGE NO. 3

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. 18255 of Corinne Guttman, pursuant to 11 DCMR § 3104.1, for a special exception under section 223, not meeting the side yard (subsection 405.9) requirements to allow a rear addition to an existing one-family semi-detached dwelling in the R-1-B District at premises 4425 35th Street, N.W. (Square 1971, Lot 19).

DECISION DATE: July 12, 2011 (Expedited Calendar)

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief.

Pursuant to 11 DCMR § 3181 this application was tentatively placed on the Board's expedited calendar for decision without hearing as a result of the applicant's waiver of their right to a hearing.

The Board provided proper and timely notice of the decision meeting for this application together with the information required by 11 DCMR § 3118.5 by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (ANC) 3F and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3F, which is automatically a party to this application. ANC 3F submitted a letter in support of the application. The Office of Planning (OP) submitted a report in support of the application.

No objections to expedited calendar consideration were made by any person or entity entitled to do by §§ 2118.6 and 2118.7 and no requests for party status were received. The matter was therefore called on the Board's expedited calendar for the date referenced above and the Board voted to grant the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 223. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit 11 – Plans) be **GRANTED.**

VOTE: **4-0-1** (Meridith H. Moldenhauer, Jeffrey L. Hinkle, Nicole C. Sorg and Lloyd J. Jordan to APPROVE)

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

FINAL DATE OF ORDER: July 19, 2011

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, 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 § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION,

FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-11A1/06-12A1
Z.C. Case No. 06-11A/06-12A
The George Washington University Foggy Bottom Campus
(Second-Stage Planned Unit Development ("PUD"), Further Processing of an Approved Campus Plan, and Modification of a First-Stage PUD @ Square 103)
April 25, 2011

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on February 3, 2011, to consider an application of The George Washington University (the "University") for the review and approval of the second stage of an approved PUD, further processing of an approved campus plan, and modification of the first-stage PUD. The Commission considered the application pursuant to § 210, Chapter 24, and Chapter 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. The Commission approves the application, subject to the conditions below.

FINDINGS OF FACT

Application, Parties, and Hearing

1. The property that is the subject of the application is located in Square 103, Lots 13, 14, 18, 809, 812, 813, 814, 819, and 820 (the "Property").[1]

2. In August 2010, the University submitted an application for second-stage PUD approval of the first phase of development of the Property. The University sought approval to develop a below-grade structure containing program space and four stories of underground parking as well as interim surface improvements related to the below-grade facilities. The University concurrently requested further processing approval of its approved campus plan to construct the new facility. The University also requested approval of a modification of the first-stage PUD in order to incorporate one of the lots that is the subject of the application into the first-stage PUD. (Exhibit 6.)

3. The application was set down for a public hearing at the Commission's October 18, 2010 public meeting. Notice of the public hearing was published in the *D.C. Register* on November 26, 2011 (57 DCR 11090) and was mailed to Advisory Neighborhood Commission ("ANC") 2A and to owners of property within 200 feet of the second-stage PUD site.

4. A public hearing was conducted on February 3, 2011. The Commission accepted Shalom Baranes and Patrick Burkhart as experts in the field of architecture, Don Hoover as an expert in the field of landscape architecture, and Robert Schiesel as an expert in the field of traffic engineering. The University provided testimony from these experts as well as from Alicia O'Neil Knight, the University's Associate Vice President for Operations.

[1] Concurrently with the Zoning Commission review process, the Property was subdivided into a single record lot, and is now known as Lot 44.

5. In addition to the University, ANC 2A was automatically a party in this proceeding. The Commission also granted a request for party status in opposition to the application from the West End Citizens Association ("WECA").

6. At the hearing, the Commission heard testimony and received evidence from the Office of Planning ("OP"), the District Department of Transportation ("DDOT"), and the D.C. Fire and EMS Department ("FEMS") in support of the application, as well as testimony and evidence from ANC 2A and WECA expressing concerns with or objections to the application.

7. The Commission also heard testimony from numerous persons in support of the application. Other than WECA, no other person or party testified in opposition to the application.

8. At the close of the hearing, the Commission directed the University to study the impacts of either an alternative location of the proposed garage entrance or one-way alley circulation pattern. The Commission also directed the University to evaluate additional measures at the alley intersections to address pedestrian safety.

9. The University filed its post-hearing submission addressing the Commission's comments on February 22, 2011. (Exhibit 39.) DDOT filed a supplemental report endorsing the University's post-hearing findings on March 2, 2011. (Exhibit 41.) WECA also filed a response to the post-hearing submission on March 23, 2011, reiterating its concerns. (Exhibit 46.) OP filed a supplemental report on March 8, 2011. (Exhibit 43.)

10. At its public meeting on March 14, 2011, the Commission took proposed action to approve the application and plans that were submitted into the record.

11. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. NCPC, by action dated April 1, 2011, found that the proposed PUD would not be not inconsistent with the Comprehensive Plan for the National Capital, nor would it adversely affect any other identified federal interests.

12. The Commission took final action to approve the application on April 25, 2011.

Campus Plan and First-Stage PUD Approval

13. In Z.C. Order No. 06-11/06-12, the Commission concurrently approved a new campus plan and first-stage PUD for the Foggy Bottom campus (the "Campus Plan/PUD"). The Campus Plan incorporated a plan for developing the campus as a whole by concentrating height and density within the central campus core and redistributing parking supply throughout the campus in multiple underground parking garages. The first-stage PUD is

coterminous with the approved boundaries for the Foggy Bottom campus, and includes all properties that were owned by the University at the time of approval of the Campus Plan/PUD. The approved first-stage PUD identified 16 development sites for future development as well as the uses, height, gross floor area, and lot occupancy for each development site.

14. For the Property that is the subject of this application, the Campus Plan/PUD approved a building devoted to academic/administrative/medical use with a height of 80 feet, lot occupancy of 90%, and gross floor area of 185,983 square feet. The Campus Plan/PUD also called for approximately 307 net new parking spaces on the Property in an underground facility.

15. The Campus Plan/PUD identified G Street as having a strong, pedestrian-oriented campus presence, and called for the retention of the existing public alley that runs east-west through the square.

Modification of the First-Stage PUD

16. The University requested approval of a modification of the first-stage PUD in order to incorporate Lot 18, which was not owned by the University at the time of the approval of the first-stage PUD and therefore not included in that approval. The incorporation of this lot into the PUD was explicitly contemplated in the first-stage PUD documentation.

17. The University stated that it was under contract to purchase Lot 18 from a fraternity. The University presented evidence that this fraternity, as well as another fraternity that had previously leased space on Lot 18, were now accommodated at other on-campus locations.

Second-Stage PUD Approval/Further Processing

Overview of the Property

18. The Property is located along G Street, N.W. between 20th Street, N.W. and 21st Street, N.W. A 16-foot-wide public alley runs along the rear of the property. Townhouses owned by the University are located to the east and west of the Property. These townhouses will be retained as a part of the University's historic preservation plan for the campus. Across the public alley to the south are properties owned by the University and devoted to miscellaneous University uses, including residence halls approaching 90 feet in height. Across G Street to the north are properties owned by the University that include designated historic landmarks.

19. The Property is located in the R-5-D Zone District and is designated as Institutional on the Future Land Use Map of the Comprehensive Plan.

The Project

20. The University sought approval to develop a below-grade structure containing one level of academic and administrative program space and four stories of underground parking containing approximately 392 parking spaces, as well as interim surface improvements (the "Project").

21. The University explained that the Project was the first phase of development of the second stage PUD for the Property, and that the future building would follow at a later date. As an interim condition, the University indicated that the surface of the Property will contain entrances to the Project, additional surface parking for 58 vehicles, space for bicycle and service vehicle parking, and landscaping.

22. The main pedestrian access to the Project will be through an entry pavilion positioned on the north side of the Property, across the street from existing academic buildings. The pavilion was designed with a simple, rectilinear form that features glass curtainwalls facing east and west to bring light into the pavilion and to the program space below. The improvements will also feature a broad trellis structure that will create a modern style portico as a sheltered entrance to the pavilion.

23. To the west of the pavilion will be a new green space for passive recreation. A covered, secured area for bicycle parking will be located southwest of the entry pavilion; this bicycle storage area will be screened from the street via an articulated wood screen wall. An area for university service vehicles will be located south of the bicycle storage, along the alley.

24. East of the pavilion entrance will be an interim surface parking lot, which will be screened from the street with landscaping. In a prehearing submission, the University agreed to discontinue use of the surface parking lot upon the completion of additional underground parking at another development site. (Exhibit 14.)

25. The entrance to the garage will be located at the southeastern corner of the property, away from the street and off the public alley. This location will permit the construction of an interim green space at the sidewalk edge adjacent to the G Street historic rowhouses, and will also allow for the potential future establishment of ground-floor building uses, rather than a parking garage entrance, along the G Street sidewalk when the second phase is constructed.

26. In connection with the Project, the University will improve the public streetscape adjacent to the Property's frontage to include wider sidewalks, widened tree pits, and a landscaped zone between the sidewalk and the property line that will include a mix of small trees, shrubs, and groundcovers. The University indicated that the sidewalk will be

paved with brick pavers, consistent with the campuswide streetscape plan being developed as a part of the Campus Plan/PUD.

27. The proposed interim surface improvements will minimize environmental impacts, particularly compared to existing conditions. The surface improvements will improve the permeability of the surface with landscaped areas, permeable paving, and a green roof over the pavilion. Two cisterns will capture runoff and reuse it for irrigation; the larger cistern has been sized to anticipate the demand needs of the future building and to permit potential greywater recycling within the second phase. The University testified that it is targeting a Silver rating under the U.S. Green Building Council's LEED 2009 for New Construction rating system.

28. The University indicated that the Project will include approximately 60 bicycle parking spaces in a secured and covered facility on the surface of the Property as well as six dedicated parking spaces in the garage for electric cars.

29. The total gross floor area included in the Project will be approximately 7,430 square feet, for a total floor area ratio ("FAR") of approximately 0.19 and a lot occupancy of approximately 19%. The entry pavilion and other structures will have a maximum height of approximately 28 feet. The Project will provide a total of approximately 392 permanent new spaces in the underground garage as well as approximately 58 interim surface parking spaces. The total number of net new permanent parking spaces will be 299 parking spaces.

30. The University requested flexibility from the rear yard requirement to accommodate the proposed location of the ramp to the garage, which will be located less than 15 feet from the rear lot line in order to provide enough distance for the ramp to make its way down two stories to the first level of underground parking and provide for the efficient location of egress stairways. (Exhibit 6, pp. 13-14.)

Public Benefits

31. The project amenities and public benefits of the PUD were proffered and accepted in conjunction with the Campus Plan/PUD process. The University indicated in its written submissions that it had started to implement many of these public benefits and project amenities. (Exhibit 6, pp. 6-8.)

32. As detailed in the University's testimony and written submissions, the proposed Project will implement the following project amenities and public benefits that were approved as part of the Campus Plan/PUD:

a. Exemplary urban design, architecture, and landscaping, including high-quality materials, pedestrian-oriented landscape improvements, clear separation of pedestrian and vehicular entrances and circulation patterns, and sustainable features;

b. Site planning and efficient land utilization, through the transformation of an existing collection of low-scale buildings and impervious surfaces into the first phase of a redevelopment that will enable both the distribution of parking to the Property and development of additional academic and administrative space within the boundaries of the campus plan;

c. Effective and safe vehicular and pedestrian access and transportation management measures. As described in greater detail in Findings of Fact 33 - 42 below, the University's proposed two-way alley access circulation plan constitutes the most effective, efficient, and safe choice for the Property, and the University's commitment to widen the alley to 20 feet and install additional pavement markings, paving, and signs at the alley intersections will ensure vehicular and pedestrian safety. The PUD also includes features that further the campuswide transportation demand management program, including 60 bicycle parking spaces and six dedicated spaces for electric cars; and

d. Environmental benefits, including landscaping and a green roof that will cover 24% of the site, stormwater management features that will capture all runoff on-site and permit the reuse of that runoff, and a commitment to achieve a minimum of the equivalent of a Silver rating under the LEED-NC 2009 rating system (which exceeds the minimum commitment of 16 points under Condition P-13 of the Campus Plan/PUD).

Site Circulation and Transportation Impact Analysis

33. The road network surrounding Square 103 consists of one-way streets running in a counterclockwise direction; 20th Street is classified as a minor arterial while the other three streets are classified as collectors. The four street intersections are signalized.

34. Consistent with established DDOT policy, the University located vehicular access to the parking garage off the existing public alley at the rear of the Property. To facilitate two-way use of the alley, the University agreed to widen the alley to 20 feet using the University's property. The two-way alley access will permit vehicles to directly access the garage from both 20th and 21st Streets, which are the primary commuter routes into and out of this portion of the campus.

35. In its post-hearing submission, the University indicated that it had evaluated site conditions at the alley intersections in order to confirm whether additional measures were required to address pedestrian traffic. The University provided photographs and site plan

dimensions that demonstrated both intersections provided exiting drivers with adequate sight distance to see passing drivers and pedestrians. The University agreed to improve the alley with special paving materials, markings, and signage to serve as a visible, audible, and tactile warning to exiting drivers that pedestrians are ahead and have the right of way. (Exhibit 39.)

36. In its initial report, DDOT endorsed the use of the existing alley system for vehicular access, and confirmed that the widening to 20 feet would adequately accommodate the proposed two-way traffic. (Exhibit 25.) In its supplemental report, DDOT reiterated its strong support for the use of the alley as a two-way alley in order to force drivers to navigate slowly in the alley. DDOT also expressed support for the special paving materials, markings, and signage proposed by the University at the alley intersections. (Exhibit 41.)

37. In its post-hearing submission, in response to the Commission's request, the University's traffic expert provided a supplemental report that analyzed the transportation impacts associated with both an alternative location for the parking garage entrance on G Street, and an alternative one-way eastbound alley circulation pattern. The analysis concluded that the two-way alley access design continued to be the preferred option because (a) the alternatives would require increased amounts of vehicular circulation on the surrounding one-way roadway network and (b) the alternatives would result in increased potential for pedestrian-vehicular impacts, particularly at higher-speed signalized intersections. Accordingly, the expert concluded that the two-way alley access configuration was the most efficient and safe vehicular circulation plan for the Project. (Exhibit 39.)

38. In its supplemental report, DDOT objected to the G Street curb cut alternative, noting that such a location would add another conflict point for vehicles and pedestrians, require extensive vehicular circulation because of the one-way nature of G Street, increase the number of potential conflicts at surrounding intersections, and unbalance the sharing of transportation modes along G Street. DDOT also expressed opposition to any one-way alley operation scheme, which would likely lead to increased travel speed in the alley. (Exhibit 41.)

39. In its post-hearing submission, the University also analyzed the design impacts associated with the G Street curb cut option: (Exhibit 39.)

    a. The University stated that a curb cut located midblock would not permit enough distance for the ramp to slope down to the first level of parking without requiring extensive and inefficient ramping with multiple turns. Furthermore, the midblock location would break up the ground-floor and lower-level floor plates, effectively bifurcating the building in two at these levels and adversely impacting the future design of the phase 2 building. The University asserted that the curb cut should be located at the eastern end of the Property, noting that location of a curb cut at the

western end of the property would be too close to the nearby intersection under DDOT guidelines; and

b. The University also provided renderings and images demonstrating that the location of the garage entrance on G Street would impose adverse visual impacts, particularly in relation to the historic rowhouses immediately to the east of the relocated entrance.

40. In its supplemental report, OP supported the findings of the University and stated that the location of the vehicular entrance on G Street would have adverse urban design impacts as well as adversely affect the historic properties to the east.

41. The Project will not cause unacceptable impacts on vehicular or pedestrian traffic, as demonstrated by the testimony and reports provided by the University's traffic expert and the DDOT reports and testimony described herein:

a. The Commission finds that the two-way alley access proposed by the University will not impose adverse or objectionable impacts on the surrounding transportation network. The Commission credits the findings of the University's traffic expert, who concluded that all four street intersections will continue to operate at acceptable levels of service after the completion of the Project. While the traffic consultant's report indicated that the intersection of the alley and 21st Street would operate at a failing level of service during the PM commuter peak hour, this condition is largely confined to those leaving the garage and is not unacceptable;

b. The Commission also finds that the two-way alley access proposed by the University is the most efficient and safe option for both vehicles and pedestrians. In so doing, the Commission credits the findings of the University's traffic expert and testimony provided by DDOT that the other alternatives would generate significantly greater potential for pedestrian/vehicular conflicts by adding an additional point of conflict, requiring less efficient circulation around the one-way street grid, and placing the conflicts at higher-speed intersections rather than at a two-way alley entrance;

c. The Commission also finds that the alley intersections, with the additional measures proposed by the University, will ensure that the Project will not impose adverse or objectionable impacts on pedestrians. The Commission also credits the testimony of DDOT that these measures are acceptable and recognizes that DDOT will determine the final measures to be installed through the public space approval process;

d. The Commission credits the testimony of DDOT that the proposed location of the parking garage entrance off the alley is consistent with District policy and that the proposed width of 20 feet is acceptable. The Commission also finds, based on the detailed analysis prepared by the University's traffic expert and DDOT's supplemental report, that two-way alley access is preferable to one-way alley access;

e. The Commission does not agree with WECA's assertion that a one-way westbound alley circulation plan should have been analyzed, because such a circulation plan would direct all the traffic to the alley intersection at 21st Street and exacerbate the ability for vehicles to exit onto the street network. In its supplemental report, DDOT also indicated that it did not support a one-way westbound alley circulation plan; and

f. The Commission does not agree with WECA that the vehicular entrance should be relocated from the alley to G Street, based on: (a) the detailed analysis prepared by the University's traffic expert demonstrating the adverse impacts of such relocation on both vehicular and pedestrian traffic in the surrounding road network; and (b) the adverse urban design and architectural impacts of such relocation on both the design of second phase of the Project and adjacent historic structures. The Commission also credits the testimony of DDOT in its supplemental report that the G Street curb cut would have adverse impacts on vehicular and pedestrian traffic.

42. The Commission also finds that the relocation of the vehicular entrance to G Street would impose adverse impacts on both the urban design of G Street and the adjacent historic properties.

Compliance with Requirements of Z.C. Order No. 06-11/06-12

43. Pursuant to Condition P-14 of Z.C. Order No. 06-11/06-12, the University demonstrated that the proposed second-stage PUD is consistent with the location, use, zoning, gross floor area, lot occupancy, and height set forth in the first-stage PUD. (Exhibit 6, p. 13.)

44. Pursuant to Condition P-16 of the Order, the University provided the compliance, impact analysis, and progress reports required for each second-stage PUD in its initial PUD application. (Exhibit 6, pp. 19-22 and Tab I through Tab O).

45. Pursuant to Condition P-17 of the Order, the University provided its most recently filed Foggy Bottom Campus Plan Compliance Report indicating substantial compliance with Z.C. Order No. 06-11/06-12. (Exhibit 6, Tab J.)

46. The Commission finds that the University has satisfied the above conditions and requirements of Z.C. Order No. 06-11/06-12.

Compliance with § 210 Standards

47. In evaluating a request for a special exception to permit a college or university use in a residential zone district, the Commission must review whether the application meets the standards for approval under § 210 of the Zoning Regulations, including whether the "proposed use will be located so that it is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable

impacts." During its consideration of the campus plan in Z.C. Case No. 06-11/06-12, the Commission determined that the use of the Foggy Bottom campus as a whole, including the number of students, faculty and staff proposed and the related traffic and parking impacts associated with that use, would not become objectionable to neighboring property. Here, the Commission finds that the University has satisfied its burden of proof under the Zoning Regulations for further processing of the approved campus plan to construct the Project.

48. For the reasons detailed in this Order, the Commission credits the testimony of the University's traffic consultant and finds that the traffic, parking, and other transportation impacts of the Project are not likely to become objectionable to neighboring property:

    a. During the campus plan proceedings in Z.C. Case No. 06-11/06-12, the Commission concluded that the distribution of parking to underground garages—including one garage located on the Property—would not generate objectionable transportation impacts. The Commission also concluded that the future levels of service at intersections throughout the campus and in the immediate vicinity would remain at primarily acceptable levels of service with the implementation of mitigation measures proposed by the University; and

    b. Here, the Commission credits the findings of the University's traffic consultant that the proposed parking garage will not have an adverse impact on traffic operations at surrounding street intersections. The Commission also credits the findings of the traffic consultant that the proposed two-way alley access site plan, with the proposed pavings, markings, and signage proffered by the University, will ensure that the operation of the proposed parking garage will not become objectionable.

49. The Commission agrees with DDOT's conclusions regarding vehicular and pedestrian impacts and related issues with the proposed development. The Commission credits DDOT's evaluation of the University's proposed two-way alley access and consideration of the issues raised by WECA regarding alternative site access and circulation plans. The Commission also credits DDOT's acceptance of the pedestrian traffic management measures proffered by the University subject to final approval by DDOT.

50. The Commission credits the evidence submitted by the University that total campus FAR would remain well within the density limit approved for the residentially-zoned portions of the campus even after the construction of the Project.

51. The Commission credits the evidence provided by the University and OP that the Project would not be inconsistent with the Comprehensive Plan, and will further the goals and policies of the Comprehensive Plan.

Compliance with PUD Standards

52. In evaluating a PUD application, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects." During its consideration of the first-stage PUD in Z.C. Case No. 06-11/06-12, the Commission determined that the development incentives and related rezoning for the entire campus were appropriate and fully justified by the superior benefits and amenities offered by the Campus Plan/PUD and this decision was affirmed by the District of Columbia Court of Appeals. Here, the Commission finds that the University has satisfied its burden of proof under the Zoning Regulations for this second-stage PUD, including the requested flexibility from the rear yard requirements and satisfaction of the PUD standards.

53. The Commission credits the testimony of the University and its architectural experts and finds that the superior design, site planning, streetscape, and sustainable features of the Project all constitute acceptable project amenities and public benefits consistent with the Commission's first-stage approval.

54. The Commission finds that the character, scale, mix of uses, and design of the Project are appropriate, and finds that the site plan is consistent with the intent and purposes of the PUD process to encourage high-quality developments that provide public benefits. In addition, the Commission finds that the site plan and features of the Project, including the amount of net new parking proposed, retention and widening of the existing public alley, and promotion of G Street as a pedestrian-oriented street, are consistent with the first-stage PUD.

55. For the reasons detailed in this Order, the Commission credits the testimony of the University's traffic consultant and finds that the traffic, parking, and other transportation impacts of the Project on the surrounding area are capable of being mitigated through the measures proposed by the University and are acceptable given the quality of the public benefits of the PUD. The Commission credits the findings of the University's traffic consultant that the proposed two-way alley access plan will not impose adverse impacts. The Commission also finds the proposed paving, markings, and signage proffered by the University are acceptable and will mitigate potential pedestrian-vehicular conflicts. The Commission was not persuaded by WECA's testimony regarding the transportation impacts of the Project, and finds that other alternatives for vehicular access and circulation would impose greater potential adverse impacts on vehicular and pedestrian efficiency and safety.

56. As detailed in this Order, the Commission agrees with DDOT's conclusions regarding vehicular and pedestrian impacts and related issues with the proposed development.

57. The Commission credits the testimony of the University and OP regarding the compliance of the Project with the Comprehensive Plan. The development is fully consistent with and furthers the goals and policies in the map, and in the citywide and area elements of the Plan, including:

    a. Designation as an Institutional use on the Future Land Use Map;

    b. Land Use Element policies recognizing the important contribution of universities to the District economy and their efforts to address transportation issues and serve as corporate role models through high-quality architecture and sustainable building methods;

    c. Other policies in the Economic Development, Education, Transportation, Environmental Protection, and Urban Design Elements related to the Land Use policies and goals stated above; and

    d. Policies in the Near Northwest Area Element regarding improved communication, increased density on-campus, and mitigation measures and amenities that improve the character of the area as a whole.

Agency Reports

58. By report dated January 24, 2011 and by testimony at the public hearing, OP recommended approval of the application, including the second-stage PUD, first-stage PUD modification, and further processing of the campus plan. OP reviewed the application under the PUD and campus plan standards of the Zoning Regulations as well as the specific conditions of the Campus Plan/PUD Order, and concluded that the University had satisfied its burden of proof.

59. In a supplemental report dated March 8, 2011, OP concluded that the University's proposed two-way alley access plan was acceptable, and that other alternative designs evaluated at the request of the Commission would impose adverse urban design impacts.

60. By reports dated January 27, 2011 and March 2, 2011, DDOT recommended approval of the University's application based on its review of the vehicular, pedestrian, and other transportation impacts of the Project as designed as well as other alternative site access designs. DDOT's specific conclusions and recommendations are discussed elsewhere in this order.

ANC 2A Report

61. At a regularly scheduled meeting on January 19, 2011, with a quorum present, ANC 2A voted 4-0-2 to approve a resolution taking no position on the application but listing issues

for the Commission's consideration. The ANC resolution requested that the University: prepare a construction management plan; undertake good faith efforts to monitor the impact on pedestrian safety at the mid-block alley intersections; demonstrate how it will manage the short-term parking impacts associated with the proposed buildout of the plan; mitigate the impact of queuing vehicles on neighborhood air quality; clarify the location of the fraternities formerly located on the Property; and address how the University plans to manage to its enrollment caps.

62. The University submitted a copy of its written responses to and clarifications of these issues at the public hearing. (Exhibit 30.) They are summarized as follows:

a. The University agreed to prepare and share a construction management plan;

b. The University proffered additional pedestrian-oriented measures in its post-hearing submission deemed acceptable by DDOT;

c. The University agreed to address the parking impacts associated with the buildout of the campus plan as a part of Z.C. Case No. 06-11B/06-12B, which will result in the removal of the University Parking Garage;

d. The University indicated that air quality and other environmental impacts would be addressed through the environmental review process associated with the consideration of the building permit for the Project;

e. The University stated that the fraternities formerly on the Property had been accommodated on other property within the campus boundaries; and

f. The University stated that it continues to remain in full compliance with the caps on student and faculty/staff population and, further, that the Project was not likely to lead to an increase in the number of students, faculty, or staff.

63. The Commission gives "great weight" to the issues and concerns raised by ANC 2A, which took no position on the application. The Commission finds that the concerns presented by the ANC were largely addressed by the University both in its direct response to the ANC and in its post-hearing submission detailing additional pedestrian traffic management measures and notes that some of the issues raised by the ANC are beyond the jurisdiction of the Commission.

Testimony in Support

64. At the hearing, the Commission received evidence and heard testimony from students and neighbors in support of the Application.

Testimony in Opposition

65. WECA presented testimony and evidence from Barbara Kahlow and Sara Maddux as well as an individual identified as a local employee. WECA generally objected to the transportation impacts of the proposed Project related to the proposed use of the public alley for vehicular access and alleged that DDOT had not conducted a satisfactory evaluation of the Project. WECA also testified that it had participated in an on-site visit with a representative of DDOT.

66. For the reasons discussed in detail above, the Commission does not agree with WECA's assertions regarding the impacts of the Project, and finds that both the University and DDOT provided thorough evaluations of the transportation impacts related to the proposed two-way alley access and alternatives in their post-hearing submissions.

67. With regard to WECA's testimony regarding statements by a DDOT representative to WECA at a site visit and the testimony of its witness regarding fire and emergency access, the Commission credits the reports of District agencies as the official position and recommendation of the agency and notes that both DDOT and FEMS provided reports in support of the application. The Commission also notes DDOT's testimony in its supplemental report that the DDOT staff member met with WECA for a different project unassociated with the Project and was not conducting a formal assessment of the Project for DDOT.

68. The Commission finds that the other issues raised by WECA regarding existing loading activity at adjacent properties, utility relocation in the alley, emergency access, and liability were either unsupported by evidence, addressed by the University and District agencies, or go beyond the scope of the Zoning Regulations.

69. No other persons or organizations provided testimony in opposition to the application.

CONCLUSIONS OF LAW

1. The Applicant requested special exception approval, pursuant to 11 DCMR §§ 210, 3305, and 3104, of further processing of its approved campus plan, and approval, pursuant to 11 DCMR Chapter 24, of a second-stage planned unit development and modification to a first-stage planned unit development for its Foggy Bottom campus. The Commission is authorized under the aforementioned provisions to grant a special exception which, in the judgment of the Commission, will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. A special exception to allow use as a college or university in a Residence zone may be granted subject to the provisions contained in § 210, including that the university use

must be "located so that it is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions" and that the maximum bulk requirements may be increased for specific buildings, subject to restrictions based on the total bulk of all buildings and structures on the campus. The Commission is also authorized under the Zoning Act to approve planned unit developments consistent with the requirements set forth in Chapter 24 of the Zoning Regulations.

2. Based on the above Findings of Fact and pursuant to Condition P-15 of Z.C. Order No. 06-11/06-12, the Commission concludes that the University has satisfied the burden of proof for special exception approval of further processing of its campus plan in accordance with § 210. In particular, the Commission concludes that the proposed project will not create objectionable traffic, parking, pedestrian, or other impacts on the surrounding community.

3. Also based on the above Findings of Fact, the Commission concludes that the University has satisfied the burden of proof for approval of the second-stage PUD and related modification of the first-stage PUD under Chapter 24 of the Zoning Regulations. Approval of this Project will provide high-quality development that provides public benefits, is consistent with the overall goal of the PUD process to permit flexibility of development and other incentives provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience."

4. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.

5. Under the PUD process and pursuant to Condition P-14 of Z.C. Order No. 06-11/06-12, the Commission has the authority to consider this application as a second-stage PUD. This second-stage review permits detailed design review of each project based on the conceptual height, density and use parameters established in the first-stage PUD and the benefits and amenities approved in exchange for that height, density, and design flexibility. The Commission concludes that the Project is consistent with the first stage PUD, including the parameters regarding location, use, height, bulk, and parking set forth for the Property in the first-stage PUD.

6. In approving the PUD, the Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards. In this application, the Commission concludes that the requested flexibility from the rear yard requirement can be granted without detriment to surrounding properties and without detriment to the zone plan or map.

7. Based on the documentation included in the initial PUD application, the Commission concludes that the University has demonstrated compliance with the conditions of the first stage PUD as detailed in Condition P-16 of Z.C. Order No. 06-11/06-12.

8. Based on the University's most recently filed Foggy Bottom Campus Plan Compliance Report, which was included in the initial application package, the Commission concludes that the University is in substantial compliance with Z.C. Order No. 06-11/06-12.

9. The development of this PUD project will carry out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter of right standards. The character, scale, mix of uses, and design of uses in the proposed PUD are appropriate, and the proposed development is compatible with the citywide and area plans of the District of Columbia.

10. The Commission concludes that this project provides superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the urban design, site planning, efficient and safe traffic circulation, sustainable features, and streetscape improvements all are significant public benefits.

11. The Commission concludes that the impact of the project is acceptable given the quality of the public benefits of the project. The proposed interim treatment of the surface improvements is appropriate. The Commission agrees with the conclusions of the University's traffic expert that the proposed project will not create adverse traffic, parking, or pedestrian impact on the surrounding community. The Commission further agrees that access from G Street or through a one-way alley is not appropriate, and would in fact create greater impacts on vehicular and pedestrian circulation on the surrounding road network.

12. Approval of the PUD and further processing application is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP and finds that the proposed project is consistent with and furthers numerous goals and policies of the Comprehensive Plan, including the Land Use Element provisions related to educational institutions, transportation impacts, and corporate leadership in exemplary design, as well as related provisions in other citywide elements and policies in the Near Northwest Area Element related to managing the impacts of campus development.

13. The Commission has judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects, and concludes approval is warranted.

14. The Commission is required under D.C. Official Code § 6-623.04 to give great weight to OP recommendations. The Commission concurs with OP's view that the first-stage PUD modification, second stage approval and further processing approval should be granted.

15. In accordance with D.C. Official Code § 1-309.10(d), the Commission must give great weight to the written issues and concerns of the affected ANC. The Commission accorded the issues and concerns raised by ANC 2A the "great weight" to which they are entitled, and in so doing fully credited the unique vantage point that ANC 2A holds with respect to the impact of the proposed application on the ANC's constituents. The Commission notes that the ANC took no position on the application, and concludes that the concerns raised by the ANC were either addressed by the University at the public hearing or exceeded the scope of the Zoning Regulations.

16. Notice of the public hearing was provided in accordance with the Zoning Regulations.

17. The University is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the applications for (1) modification of the first-stage planned unit development ("PUD") for The George Washington University Foggy Bottom Campus; (2) second-stage PUD approval for property consisting of Square 103, Lots 13, 14, 18, 809, 812, 813, 814, 819, and 820 ("Property")[2]; and (3) further processing approval of the 2007 Foggy Bottom Campus Plan. This approval is subject to the following guidelines, conditions, and standards:

1. This project shall be developed in accordance with the plans marked as Tab A of Exhibit 6 of the record and as modified by Exhibit 31 of the record, as modified by guidelines, conditions, and standards herein.

2. The University shall have flexibility from the rear yard provision of the Zoning Regulations as shown on the approved plans.

3. The project shall be used for academic/administrative/medical and parking uses.

4. The project shall provide parking as shown on the approved plans, provided:

[2] Concurrently with the Zoning Commission review process, the Property was subdivided into a single record lot, Lot 44.

a. The University shall be permitted to make alterations to the design of the underground parking garage, provided that the garage contains approximately 392 parking spaces, which requirement may be satisfied with any combination of compact and full-sized spaces;

b. The University shall cease to provide parking on the interim surface lot shown on the approved plans upon the issuance of a certificate of occupancy for the second stage PUD currently pending before the Commission in Z.C. Case No. 06-11B/06-12B; and

c. The University shall set aside a minimum of six spaces and related charging stations in the garage for electric vehicles.

5. The University shall design the project to achieve the equivalent of a minimum of a Silver rating on the LEED-NC 2009 rating system.

6. The University shall provide a minimum of 60 bicycle parking spaces on the surface of the Property, as shown on the approved plans.

7. Prior to the issuance of a certificate of occupancy for the project, the University shall demonstrate that it has:

a. Constructed the streetscape improvements shown on the approved plans;

b. Widened the alley to a total width of 20 feet;[3] and

c. Constructed the paving, marking, and signage improvements at the alley intersections with both 20th Street and 21st Street, as described on pages 5-6 and shown on pages A10 and A12 of Tab A of Exhibit 39 of the record.

The final design of any improvements in public space shall be subject to final approval from DDOT and may be modified in response to DDOT direction.

8. The University shall have flexibility with the design of the PUD in the following areas:

a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;

b. To vary final selection of the exterior materials within the color ranges and materials types as proposed based on availability at the time of construction; and

[3] The additional four feet of alley width shall be on the University's property.

c. To make minor refinements to exterior details and dimensions, including balcony enclosures, belts, courses, sills, bases, cornices, railings, and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit.

9. No building permit shall be issued for this project until the University has recorded a covenant among the land records of the District of Columbia between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the University and all successors in title to construct on or use the Property in accordance with this Order and any amendment thereof by the Zoning Commission.

10. The application approved by this Commission shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for the building permit as specified in 11 DCMR § 2409.1.

11. 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.

On March 14, 2011, upon the motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **APPROVED** this application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Greg M. Selfridge to approve; Michael G. Turnbull to approve by absentee ballot).

On April 25, 2011, upon the motion of Commissioner Turnbull, as seconded by Commissioner Selfridge, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, Greg M. Selfridge, and Michael G. Turnbull to adopt).

In accordance with the provision of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on July 22, 2011.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-14B
Z.C. Case No. 06-14B
MidAtlantic Realty Partners, LLC
(Modification to Approved Planned Unit Development)
April 25, 2011

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on March 7, 2011, to consider an application from MidAtlantic Realty Partners (the "Applicant"), on behalf of the owners of Lot 26 (formerly, Lots 23, 811, 812, and 813) in Square 3584, for the approval of a modification to the planned unit development ("PUD") approved pursuant to Z.C. Order No. 06-14. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR §3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. Pursuant to Z.C. Order No. 06-14, dated June 8, 2009, effective June 19, 2009, the Commission granted consolidated approval of a PUD for Lots 23, 811, 812, and 813 in Square 3584. The subject property has since been subdivided into a new single record lot and is now known as Lot 26 in Square 3584 (the "Property").

2. The Property has a land area of approximately 134,665 square feet. It is a triangular parcel bounded by New York and Florida Avenues, N.E., and the Metrorail tracks. The Property is designated mixed-use High-Density Residential/High-Density Commercial on the Comprehensive Plan Future Land Use Map, and is zoned C-3-C.

3. The approved PUD is a mixed-use project that consists of 594,896 square feet of office use; approximately 229,690 square feet of residential use; approximately 120,443 square feet of hotel use; and approximately 7,000 square feet of retail use. Of the residential gross floor area for the project, eight percent will be devoted to affordable housing for households with incomes that do not exceed 80% of the area median income ("AMI"), in accordance with Z.C. Order No. 06-14. The approved project has a density of 7.06 floor area ratio (“FAR”) and a building height of 130 feet. Parking will be provided at a parking ratio of 0.6 space per dwelling unit for the residential use; 0.25 space per guest room for the hotel use plus one parking space for each 300 square feet of floor area in either the largest function room or largest exhibit space, whichever is greater; and one parking space for each 1,800 square feet of gross floor area of office use. At least two of the parking spaces shall be reserved for use by a car-sharing service.

4. Pursuant to Z.C. Order No. 06-14A, the Commission granted a two-year extension of time for the PUD, extending the approval until June 29, 2011, within which time an

application must be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than June 29, 2012.

5. On May 17, 2010, the Applicant filed an application with the Commission for a modification of the PUD. (Exhibits 3, 4A, 4B, and 5.**)** Under the modification, the Applicant would have the option of: (a) constructing and operating the residential/hotel building proposed in the approved PUD; or (b) eliminating the hotel component of the building and constructing and operating a single apartment building with approximately 346,405 square feet of residential floor area and approximately 5,070 square feet of ground floor retail (the "PUD Modification"). Under the PUD Modification, the apartment building would have a maximum of 430 dwelling units, and eight percent of the residential floor area would be reserved for units for households with incomes that do not exceed 80% of the AMI. The FAR for the PUD, as modified, is 7.08.

6. At its public meeting held on July 26, 2010, the Commission voted to schedule a public hearing on the application.

7. On December 21, 2010, the Applicant submitted a Prehearing Statement. (Exhibit 19.) The Prehearing Statement included revised plans showing additional details on the project's design and materials and roof structure, and addressed issues raised by the Commission and the Office of Planning ("OP").

8. On February 1, 2011, the Applicant submitted a Supplemental Filing, which included a revised set of architectural plans and elevations with a cover sheet dated January 31, 2011. (Exhibits 25 and 26.) The revised drawings were in response to additional concerns about the design of the project from OP.

9. After proper notice, the Commission held a public hearing on the application on March 7, 2011. The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 5C, the ANC within which the Property is located.

10. At the public hearing on the modification application, the Applicant submitted a Supplemental Statement, in which the Applicant confirmed certain enhancements to the project design, the distribution of the affordable housing units, and provided revisions to the PUD calculations. (Exhibit 29.) Revised drawings, dated March 7, 2011 (Sheets 251-255), were also submitted as part of the filing.

11. Three principal witnesses testified at the public hearing on behalf of the Applicant -- Matthew Robinson, of MidAtlantic Realty Partners, LLC; Marius Radulescu, of SK&I Architectural Design Group, LLC; and Steven E. Sher, Director of Zoning and Land Use Services, at Holland & Knight LLP. Based upon his professional experience, as evidenced by the resume submitted for the record, Mr. Radulescu was qualified by the Commission as an expert in architecture. Mr. Sher, previously qualified as an expert by

the Commission, testified as an expert in land use and zoning. A copy of Mr. Sher's Report to the Commission was submitted at the hearing. (Exhibit 32.)

12. OP testified in support of the modification application at the public hearing.

13. Commissioner Timothy Clark, the Single Member District representative for ANC 5C05, testified in support of the modification application at the public hearing.

14. At the public hearing, the Applicant testified that the PUD Modification was presented to the Edgewood Civic Association, the Eckington Civic Association, and ANC 5C, and each organization supported the proposed modification.

15. At the conclusion of the public hearing held on March 7, 2011, the Commission took proposed action to approve the modification application and the architectural plans and drawings that were submitted into the record. The Commission requested an exhibit showing the distribution of the affordable dwelling units and a resolution in support of the application from ANC 5C. The Applicant also offered to file a consolidated set of the current architectural plans and drawings for the PUD Modification.

16. On March 11, 2011, the Applicant filed Z.C. Case No. 06-14C, seeking a two-year extension of time for the PUD approval, as established in Z.C. Order 04-16A. Under the extension request, the original PUD and the proposed modification to the PUD, would be valid until June 29, 2013, within which time an application must be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than June 29, 2014.

17. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") on March 8, 2011 under the terms of the District of Columbia Home Rule Act. NCPC, by report dated April 7, 2011 found that the proposed modification to allow the residential use in lieu of the previously approved hotel use as an option for the PUD will not affect the federal interests. (Exhibit 41.)

18. The Commission took final action to approve the modification application on April 25, 2011.

Modified PUD Project

19. The PUD, as modified, will give the Applicant the option of: (a) constructing and operating on the Property the previously approved residential/hotel building; or (b) eliminating the hotel component of the building, and constructing and operating a single apartment building with approximately 346,405 square feet of residential floor area and approximately 5,070 square feet of ground floor retail.

20. The PUD Modification requires an increase of approximately 40 residential parking spaces, depending on the exact number of units constructed. The parking ratio for the residential use will remain at 0.6 spaces per dwelling unit.

21. As noted in the final OP Report, dated February 25, 2011, the general footprint, height, massing, materials and color for the residential building for the PUD, as modified, would be similar to the approved building. (Exhibit 27.) As reflected on Sheet 253 of the architectural drawings filed on April 11, 2011, the garage doors near the intersection of Florida and New York Avenues will employ frosted glass; and a frosted glass window will be added to the brick veneer wall on Florida Avenue, to the left of the loading dock. (Exhibit 39.) These refinements were made to reduce the visual impact of loading docks and "blank walls" and to provide a more welcoming and interesting treatment.

Development Flexibility

22. For the PUD Modification, the Applicant requested flexibility from the following requirements:

    a. *Roof Structures.* The Applicant requested flexibility from §§ 411 and 770.6 of the Zoning Regulations, which require the penthouse to be setback from all exterior walls a minimum distance of 18 feet, six inches. The penthouse meets this requirement except on the southeast corner where it has a setback of 12 feet, six inches, which is due primarily to the narrowness of the building. The penthouse has been designed to be the minimum size necessary to house all of the required rooftop equipment, services and access. The building is designed to step back from Florida Avenue and curve at New York Avenue, in order to make it more architecturally appealing, but these elements also significantly reduce the building width. The reduced setback for the penthouse is necessary in order to accommodate exterior cladding, structure, equipment and the required clearances; and the visual impacts are mitigated by the fact that this section of the penthouse faces the interior courtyard for the project; and

    b. *Additional Areas of Flexibility.* The Applicant requested flexibility in the following areas:

        (i) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, elevators, escalators, and toilet rooms provided that the variations do not change the exterior configuration of the building;

        (ii) To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, so long as the number of

parking spaces does not decrease below the minimum level required by the Zoning Regulations;

(iii) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and

(iv) To make refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, conies, railings, roof, skylights, architectural embellishments and trims, or any other minor changes to comply with the District of Columbia Construction Codes or that are otherwise necessary to obtain a final building permit or any other applicable approvals.

Public Benefits and Amenities

23. The PUD, as modified, has the same public benefits and amenities as originally approved for the project in Z.C. Order No. 06-14.

24. As required under Z.C. Order No. 06-14, the Applicant has made the following contributions to the community:

a. $50,000 contribution to the District of Columbia Commission on the Arts and Humanities for the arts-related project for the Florida Avenue underpass;

b. $25,000 contribution to City Year to cover the five-year operating costs for the Young Heroes Program;

c. $10,000 contribution to Emery Elementary School Student Activity Fund for field trips, educational celebrations, audio/visual upgrades and technology upgrades;

d. $10,000 contribution to the Harry Thomas Community Service Center for the purchase and installation of a scoreboard; and

e. $5,000 contribution to North Capitol Main Street, Inc. for the development of a database of the commercial/retail properties in the organization's service area.

Documentation of the contributions is attached as Exhibit H of the Applicant's statement, dated May 17, 2010. (Exhibit 3.)

25. The Applicant entered into a First Source Employment Agreement with the Department of Employment Services ("DOES") ensuring cooperation with DOES for employee recruitment for jobs created by the project with the objective that 51% of the employees hired in connection with the development of the project are District of Columbia

residents. A copy of the First Source Employment Agreement is attached as Exhibit K of the Applicant's Statement, dated May 17, 2010. (Exhibit 3.)

26. The approved PUD is exempt from the Inclusionary Zoning provisions of Chapter 26 of the Zoning Regulations because it was set down prior to March 14, 2008. (11 DCMR § 2608.2.) The exemption applies to this modification as well.

27. The approved PUD required the Applicant to devote a minimum of approximately 18,375 square feet, or eight percent of the residential gross floor area, to affordable housing for residents with incomes no greater than 80% of the AMI. The Applicant agreed to devote the same percentage of the residential gross floor area added by this PUD modification to affordable housing for residents with incomes no greater than 80% of the AMI. So if the Applicant builds the modified PUD, it will be required to devote an additional 9,337 square feet of gross floor area to affordable housing, resulting in a total of approximately 27,712 square feet of gross floor area devoted to affordable housing for residents with incomes no greater than 80% of AMI. Because the Applicant is not required by law to provide this affordable housing, the proffer remains a relevant public benefit.

28. The affordable units shall have the same proportion of unit types (studio, one-bedroom and two-bedroom units) as the market rate units. The construction of the affordable units, the affordability control period, and the method of selecting the occupants/purchasers of the units shall be in accordance with the Planned Unit Development Inclusionary Housing Commitment Standards dated December 4, 2006, and marked as Exhibit No. 38 of the record of Z.C. Case Number 06-14. The affordable units required by the original PUD shall be distributed in accordance with the Planned Unit Development Inclusionary Housing Commitment Standards. The affordable units added through this PUD modification shall be distributed as depicted in the chart submitted as part of the Applicant's post-hearing submission, dated April 11, 2011. (Exhibit 38.)

Office of Planning Report

29. By report dated July 16, 2010, OP stated that the requested modifications remain consistent with the Comprehensive Plan, and the proposed alternative plans respect the general intent of the previously approved PUD. The report recommended that the Commission schedule a public hearing on the modification application. (Exhibit 15.)

30. By report dated February 25, 2011, OP recommended the Commission approve the modification application, contingent upon the Applicant providing a supplemental statement prior the hearing containing certain clarification and changes related to the building design and the distribution of the affordable units. (Exhibit 27.)

31. The OP report, dated February 25, 2011, stated that the District Department of Transportation indicated to OP that it had no concerns with the requested modification. There were no other agency responses at the time the OP report was submitted.

Post-Hearing Submissions

32. On April 11, 2011, the Applicant submitted a post-hearing submission. (Exhibits 38 and 39.) The post-hearing submission included: (i) an exhibit that was presented at the public hearing, depicting that area of the PUD covered under the modification application; (ii) a chart showing the distribution of the affordable units; and (iii) a consolidated set of the architectural plans and drawings for the modification application.

33. An electronic copy of the resolution in support of Z.C. Case No. 06-14B from ANC 5C was posted on April 11, 2011. (Exhibit 40.)[1]

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)

2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a modification to a previously approved consolidated PUD. Any modifications proposed to an approved PUD that cannot be approved by the Zoning Administrator shall be submitted to and approved by the Commission. The proposed modification shall meet the requirements for and be processed as a second-stage application, except for minor modifications and technical corrections as provided for in § 3030. (11 DCMR § 2409.9.) The Commission treated this modification request as a second-stage PUD application.

3. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, or for yards and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

[1] When the Commission took final action, it observed a discrepancy between the number of ANC Commissioners listed as voting on this resolution, and the number of Commissioners listed on the letterhead, and agreed to keep the record open for the ANC to submit a corrected letter. The ANC has advised Office of Zoning staff that a corrected letter will not be filed. Because the discrepancy does not affect the prerequisite for giving the ANC great weight, this Order is being issued and the record is now closed.

4. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

5. The modified PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

6. The modified PUD, as approved by the Commission, complies with the applicable height, bulk and density standards of the Zoning Regulations. The uses for this project are appropriate for the Property. The impact of the project on the surrounding area and the operation of city services are acceptable given the quality of the public benefits in the project.

7. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan.

8. The project benefits and amenities are reasonable tradeoffs for the requested development flexibility.

9. Approval of this modified PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

10. The Commission is required under § 13(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and conditions expressed in the written report of an affected ANC. In this case, ANC 5C voted unanimously to support the modification application and recommended that the Commission approve the application. (Exhibit 40.) The Commission has given ANC 5C's recommendation great weight in approving the modification application.

11. The Commission is required under § 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) to give great weight to OP recommendations. For the reasons stated above, the Commission concurs with OP’s recommendation for approval and has given the OP recommendation the great weight it is entitled.

12. The application for the modified is PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for modifications to the approved planned unit development located at Lot 26 (formerly, Lots 23, 811, 812 and 813) in Square 3584 originally approved in Z.C. Order No. 06-14, subject to the following conditions. For the purposes of these conditions, the term "Applicant" shall mean the person or entity then holding title to the Subject Property. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Subject Property, that party shall have no further obligations under this Order; however, that party remains liable for any violation of these conditions that occurred while an Owner.

A. PROJECT DEVELOPMENT

1. The Applicant has the option to develop the PUD consistent with Z.C. Order No. 06-14. If the Applicant develops the original project, the conditions of Z.C. Order 06-14 will apply to the project. If the Applicant develops the project as modified by this Order, the following conditions will apply.

2. The Applicant may develop the PUD, as modified herein, in which case the project shall contain approximately 594,896 square feet of office use; approximately 346,405 square feet of residential use; and approximately 12,070 square feet of retail use. The maximum density shall be 7.08 FAR. The maximum height of the building shall be 130 feet, as shown on the Plans. The building may include roof structures in excess of that height, with a height not to exceed 18.5 feet above the roof upon which they are located, as shown on the Plans.

3. The PUD Modification shall be developed in accordance with the plans prepared by SK&I Architectural Design Group, dated April 11, 2011, marked as Exhibit 39 of the record (the “Plans”).

4. The Applicant shall continue to comply with affordable housing requirements of Condition No. 3 of Z.C. Order 06-14, which is incorporated into this Order pursuant to Condition B.1. The PUD shall further devote an additional 9,337 square feet of gross floor area of the residential gross floor area for the project to affordable housing for households with income that do not exceed 80% of the AMI (“Affordable Units”). The Affordable Units shall have the same proportion of unit types (studio, one-bedroom and two-bedroom units) as the market rate units. The construction, the affordability control period, and the method of selecting the occupants/purchasers of the Affordable Units shall be in accordance with the Planned Unit Development Inclusionary Housing Commitment Standards dated December 4, 2006, and marked as Exhibit No. 38 of the record of Z.C. Case

Number 06-14. The Affordable Units shall be distributed as depicted in the chart submitted as part of the Applicant's post-hearing submission, dated April 11, 2011, and marked as Exhibit 38 of the record.

5. Parking for the modified PUD shall be provided at a ratio of 0.6 space per dwelling unit for the residential use; one parking space for each 1,800 square feet of gross floor area of office use; and one parking space for each 3,000 square feet of gross floor area for retail use. At least two of the parking spaces shall be reserved for use by a car-sharing service.

6. The project shall include three 30-foot-deep loading berths and one 20-foot-deep loading berth for the office use, and one 55-foot-deep and one 20-foot-deep loading berth for the residential/hotel use.

7. The Applicant shall have flexibility with the design of the PUD in the following areas:

   a. To have a roof structure that does not meet the setback, as required under §§ 411 and 770.6 of the Zoning Regulations, to the extent depicted in the Plans and the architectural plans and drawings approved in Z.C. Order No. 06-14;

   b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atrium and mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not change the exterior configuration of the building;

   c. To make refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylights, architectural embellishments and trim, or any other minor changes to comply with the District of Columbia building code or that are otherwise necessary to obtain a final building permit or any other applicable approvals;

   d. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, as long as the number of parking spaces does not decrease below the minimum specified in the Zoning Regulations; and

   e. To eliminate the interior drive to the south section of the office building should operational and/or security needs require.

B. PUBLIC BENEFITS

1. The PUD, as modified, shall comply with Condition Nos. 3, 5 through 8, and Condition No. 15 of Z.C. Order No. 06-14.

C. MISCELLANEOUS

1. **Prior to the issuance of a building permit for the project**, the Applicant shall record a covenant in the land records of the District of Columbia, between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General. Such covenant shall bind the Applicant and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Commission.

2. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Zoning Commission.

3. The PUD shall be valid until June 29, 2011, in accordance with Z.C. Order No. 06-14A. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction must commence no later than June 29, 2012. Failure to take these actions will result in the expiration of the PUD approval as of the applicable date.

4. 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.

On March 7, 2011, upon the motion of Commissioner Selfridge , as seconded by Vice Chairman Schlater, the Zoning Commission **APPROVED** this Application at the conclusion of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, Greg M. Selfridge, and Michael G. Turnbull to approve).

On April 25, 2011, upon the motion of Vice Chairman Schlater, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0**

(Anthony J. Hood, Konrad W. Schlater, Peter G. May, Michael G. Turnbull, and Greg M. Selfridge to adopt).

In accordance with the provisions of 11 DCMR §3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on July 22, 2011.

APPENDIX TO ORDER 06-14B

The following are the conditions in Z.C. Order 06-14 that are referenced in Condition B(1) of Order 06-14B:

3. Of the residential gross floor area for the project, a minimum of approximately 18,375 square feet, or eight percent of the residential gross floor area, shall be devoted to affordable housing for residents with incomes no greater than 80% of the area median income. The construction and distribution of the affordable units, the affordability control period, and the method of selecting the occupants/purchasers of the units shall be in accordance with the Planned Unit Development Inclusionary Housing Commitment Standards dated December 4, 2006, and marked as Exhibit No. 38 of the record.

5. The Applicant shall design and implement a transportation management plan that includes the strategies set forth on pages 46 through 50 of the Transportation Impact Study by Wells & Associates, LLC, dated November 9, 2006, and marked as Exhibit No. 29 of the record.

6. The Applicant, at its sole expense, shall cause the design and installation of a traffic signal at the intersection of Florida Avenue and 2nd Street, N.E., in accordance with DDOT standards and guidelines. The traffic signal shall be installed prior to the issuance of the first certificate of occupancy for the PUD.

7. The Applicant shall enter into an agreement with DDOT for the installation and maintenance of the improvements to the Metropolitan Branch Trail, along the eastern boundary of the PUD site. The improvements shall include, but not be limited to, the enclosed atrium/rest area with a stair, elevator, seating, bike parking, drinking fountains, restroom access, signage, an information kiosk and landscaping.

8. Public access to the project to and from New York Avenue and the Metropolitan Branch Trail shall be permitted in accordance with the following schedule:

   (i) The New York Avenue staircase shall be open from 7:00 a.m. to 7:00 p.m.

   (ii) The Metropolitan Branch Trail Atrium and the stairs and elevators to the plaza shall be open from 6:00 a.m. to 9:00 p.m.

   Additionally, the PUD shall include one public restroom for use during normal retail hours.

15. The Applicant shall abide by the terms of the First Source Employment Agreement entered into with the Department of Employment Services in order to achieve the goal of utilizing District of Columbia residents for at least 51% of the jobs created by the PUD.

ZONING COMMISSION ORDER NO. 06-14C
Z.C. CASE NO. 06-14C
MidAtlantic Realty Partners, LLC
Two-Year Time Extension for PUD at Florida and New York Avenues, N.E.
(Square 3584, Lot 26)
April 25, 2011

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on April 25, 2011. At the meeting, the Commission approved a request from MidAtlantic Realty Partners, LLC (the "Applicant") for a time extension for an approved planned unit development ("PUD") for Lot 26 (formerly, Lots 23, 811, 812, and 813) in Square 3584 (the "Property"). The Commission considered the request pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations. The Commission determined that this request was properly before it under the provisions of § 2408.10 of the Zoning Regulations.

FINDINGS OF FACT

1. The PUD was originally approved in Z.C. Order No. 06-14 as a mixed-use project that consists of 594,896 square feet of office use; approximately 229,690 square feet of residential use; approximately 120,443 square feet of hotel use; and approximately 7,000 square feet of retail use. Of the residential gross floor area for the project, eight percent is devoted to affordable housing for households with incomes that do not exceed 80% of the area median income ("AMI"). The approved project has a density of 7.06 floor area ratio ("FAR") and a building height of 130 feet. Parking is provided at a parking ratio of 0.6 space per dwelling unit for the residential use; 0.25 space per guest room for the hotel use plus one parking space for each 300 square feet of floor area in either the largest function room or largest exhibit space, whichever is greater; and one parking space for each 1,800 square feet of gross floor area of office use. At least two of the parking spaces are reserved for use by a car-sharing program.

2. The PUD approval was valid, originally, until June 29, 2009. However, pursuant to Z.C. Order No 06-14A, the Commission granted a two-year extension of time for the PUD, extending the approval until June 29, 2011. By that date, it was required that an application be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations, and construction commence no later than June 29, 2012.

4. On May 17, 2010, the Applicant filed Z.C. Case No. 06-14B, seeking a modification of the PUD. Under the modification, the Applicant has the option of: (a) constructing and operating the residential/hotel building proposed in the approved PUD; or (b) eliminating the hotel component of the building and constructing and operating a single apartment building with approximately 346,405 square feet of residential floor area and approximately 5,070 square feet of ground floor retail (the "PUD Modification"). The apartment building has a maximum of 430 dwelling units, and eight percent of the residential floor area is reserved for units for households with incomes that do not exceed 80% of the AMI. The density for the PUD, as modified, is 7.08 FAR.

5. On March 7, 2011, the Commission took proposed action to approve the PUD Modification.

6. By letter dated and received by the Commission on March 11, 2011, the Applicant filed a request to extend the validity of the PUD approval for a period of two years, such that an application for a building permit must be filed no later than June 29, 2013, and construction must commence no later than June 29, 2014.

7. The letter indicates that the project has experienced delay beyond the Applicant's control. In this case, the Property has been cleared and is ready for development. However, due to the real estate market conditions over the past couple of years, the Applicant has been unable to obtain sufficient financing for the construction of the approved PUD. The depressed market conditions also resulted in a significant depreciation of the Property. The Applicant purchased Lots 23 and 811 of the in 2007 for $52,411,386; but in 2009, according to an appraisal by Millennium Real Estate Advisors, Inc., dated July 1, 2009, the land value for the lots was $30,650,000. At that time, the Applicant had a loan on the Property equal to $35 million. Therefore, in order to fund the costs necessary to prepare the Property for construction financing for vertical development, the Applicant was forced to bring in a new capital partner into the project, which further delayed the project. The new venture, CK MRP Washington Gateway, LLC, purchased Lots 23 and 811 in November of 2010, for $25,416,240, less than half of what the lots were purchased for in 2007. To further complicate matters, in the Fall of 2010, in response to the fragile hotel market in the NoMA submarket the hotel franchise that the PUD was originally designed to accommodate was denied.

8. In light of the foregoing, the Applicant was forced to consider the option of converting the hotel portion of the project to a residential use. The time it will take to make the necessary design revisions, obtain the approval of the PUD Modification, and prepare the permit drawings will extend beyond the term of the PUD approval. Due to the interconnected nature and scale of the PUD, a delay in the residential/hotel portion of the project necessitates a delay in the overall project, because the residential/hotel building must be constructed prior to or concurrently with the office building.

9. The Applicant's request for a time extension included an affidavit attesting to the foregoing. The affidavit is attached as Exhibit C of the Applicant's letter. (Exhibit 1.)

10. On April 14, 2011, the District of Columbia Office of Planning (“OP”) submitted a report stating that the time extension application met all applicable standards for approval. (Exhibit 4.)

11. On April 25, 2011, the Commission took final action to approve Z.C. Case No. 06-14B for the modification of the PUD.

12. The only other party to this application for an extension of the PUD approval was Advisory Neighborhood Commission ("ANC") 5C. The Applicant served a copy of its request on ANC 5C, which submitted a letter dated March 15, 2011, in support of the request for a two-year PUD extension. (Exhibit 5.) ANC 5C's letter did not indicate whether the matter was considered at a meeting that was properly noticed by the ANC, the number of members of the ANC that constitute a quorum, the vote on the motion to adopt the report, or whether the meeting was open to the public.

CONCLUSIONS OF LAW

1. Pursuant to § 2408.10 of the Zoning Regulations, the Commission may extend the validity of a PUD approval for good cause shown upon a request made before the expiration of the approval. Section 2408.11 provides that an extension of the validity of a PUD may be granted by the Commission for good cause shown if an applicant has demonstrated with substantial evidence one or more of the following criteria: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or (c) the existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.

2. The Commission concludes that the application complied with the notice requirements of 11 DCMR § 208.10(a) by serving all parties with a copy of the application and allowing them 30 days to respond.

3. The Commission concludes there has been no substantial change in any material facts that would undermine the Commission's justification for approving the original PUD.

4. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DMCR § 2408.11(a). Specifically, the Applicant has been unable to obtain sufficient project financing for the PUD, following the applicant's diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control.

5. Section 2408.12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11. The hearing shall be limited to the specific and relevant evidentiary issues in dispute.

6. The Commission concludes a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.

7. The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

8. The Commission is required by § 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)) to give great weight to the issues and concerns expressed in the affected ANC's written recommendation. However, ANC 5C's letter did not meet several threshold criteria established by the ANC Act. The letter did not indicate whether the matter was considered at a meeting that was properly noticed by the ANC, required by D.C. Official Code § 1-309.11(c), or whether the meeting was open to the public, required by D.C. Official Code § 1-309.11(g). The letter was therefore not qualified to receive great weight. D.C. Official Code § 1-309.10(d)(1).

9. The Commission is required under § 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) to give great weight to OP recommendations. In its report, OP concluded that the Applicant had satisfied all the relevant criteria for approval. The Commission has carefully considered its analysis and has given the recommendation great weight.

DECISION

1. In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a two-year time extension of the PUD approved in Z.C. Order No. 06-14, and modified in Z.C. Order No. 06-14B (collectively, the "PUD").

2. The PUD shall be valid until June 29, 2013, within which time an application must be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than June 29, 2014. Failure to take these actions shall result in the expiration of the PUD approval as of the applicable date.

3. 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.

On April 25, 2011, upon the motion of Chairman Hood, as seconded by Commissioner May, this Order was **ADOPTED** by the Zoning Commission at its public meeting, by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, Michael G. Turnbull, and Greg M. Selfridge to adopt).

In accordance with the provisions of 11 DCMR §3028.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on July 22, 2011.

ZONING COMMISSION ORDER NO. 06-29B
CASE NO. 06-29B
Washington Value Added I, LLC
(Two-Year PUD Time Extension @ Square 72, Lot 74)
May 23, 2011

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on May 23, 2011. At the meeting, the Commission approved a request from Washington Value Added I LLC ("Applicant") for a second time extension for an approved planned unit development ("PUD") for property consisting of Lot 74 in Square 72 (the "Subject Property") pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations. (11 DCMR.)

FINDINGS OF FACT

1. By Z.C. Order No. 06-29, the Commission approved a PUD for the Subject Property and an application for a related amendment to the Zoning Map from the R-5-E Zone District to the CR Zone District for the Subject Property. The Subject Property consists of approximately 31,244 square feet of land area. The approved PUD includes plans to renovate and reconfigure the existing hotel and to extend the height of the building from 90 feet to 110 feet with a two-story addition. This expansion will increase the gross floor area to contain approximately 217,684 square feet and will have a density of 6.97 floor area ratio ("FAR").

2. The order became effective on July 13, 2007, and pursuant to 11 DCMR § 2408.8, was to expire on July 13, 2009, unless an application for a building permit was filed before that date.

3. By Z.C. Order No. 06-29A, the Commission approved a request from the Applicant to extend the validity of the PUD approval for a period of two years such that an application must be filed for a building permit for the PUD no later than July 12, 2011, and construction must be started no later than July 12, 2012.

4. By letter dated and received by the Commission on April 18, 2011, the Applicant filed a second request to extend the validity of the PUD approval for a period of two years, such that an application must be filed for a building permit for the PUD no later than July 12, 2013, and construction must commence no later than July 12, 2014. The letter indicates that the project continues to experience delays beyond the Applicant's control, specifically the lack of construction financing for the hospitality industry as a result of the persistent effects of the global economic recession.

5. Based on the Applicant's letter, supported by a sworn affidavit, the Commission finds that the debt and equity market over the past two years, coupled with poor hotel valuations, presented no opportunity to secure either debt or equity to finance the hotel

expansion. The hotel asset was down nearly 40% from the original projections, seriously impacting overall asset value. Additionally, given the market uncertainty, interest in development projects such as this one was extremely low. Moreover, the Applicant's parent company, Carey Value Added, S.L. ("CVA"), also experienced its own share of decline during the recession. With investments in 14 hotels in the United States and Europe, the past two years were extremely difficult for the company. Since purchasing the hotel in 2008, CVA restructured the owning company and spent much of the past two years attempting to source capital to preserve the company's owned assets. In December 2010, the company was successful in recapitalizing and restructuring its debt. However, the hotel market in the District has still not fully recovered and thus the Applicant needs additional time in which to pursue the PUD.

6. Based on the information presented by the Applicant, the Commission finds that there have been no material changes to the application that would undermine the Commission's justification for approving the original PUD.

7. By report dated May 13, 2011, the Office of Planning ("OP") recommended that the Applicant's request for a second extension of the PUD validity period be granted. OP stated that the Applicant has been unable to obtain sufficient project funding for the proposed addition as a result of its inability to secure either debt or equity financing for the project, in addition to the hotel market's slow recovery as a result of the recent financial crisis. OP noted that these factors are beyond the Applicant's reasonable control. Based on the sworn affidavit provided by the Applicant, and the absence of any substantial change in the material facts upon which the Commission granted the original PUD application, OP concluded that there is substantial evidence demonstrating good cause for the requested extension.

8. The only parties to this application are Advisory Neighborhood Commission ("ANC") 2A, the West End Citizens Association ("WECA"), and the Foggy Bottom Association ("FBA"). The Applicant served a copy of its request on the parties. By letter dated May 20, 2011, ANC 2A submitted a letter to the record in support of the extension request, provided there are no material changes as presented in the original zoning case and order. WECA and FBA did not file responses to the record.

CONCLUSIONS OF LAW

Pursuant to § 2408.10 of the Zoning Regulations, the Commission may extend the validity of a PUD approval for good cause shown upon a request made before the expiration of the approval. Section 2408.11 provides that an extension of the validity of a PUD may be granted by the Commission for good cause shown if an applicant has demonstrated with substantial evidence one or more of the following criteria: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control; (b) an inability to

secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or (c) the existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.

The Commission concludes the application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the application and allowing them 30 days to respond.

The Commission concludes there has been no substantial change in any material facts that would undermine the Commission's justification for approving the original PUD.

The Commission concludes the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(a), the Applicant's inability to obtain sufficient project financing for the PUD, following its diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond its control. The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

The Commission is required under § 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) (2001)), to give great weight to the affected ANC's recommendations. ANC 2A submitted a resolution in support of the requested extension. (Exhibit 6.) The Commission has given ANC 2A's recommendation great weight in approving this application.

The Commission is required under § 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) to give great weight to OP recommendations. OP submitted a report indicating that the Applicant meets the standards of § 2408.10 and 2408.11(a) of the Zoning Regulations, and therefore recommended that the Commission approve the requested extension. The Commission has given OP's recommendation great weight in approving this application.

Subsection 2408.12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11. The Commission concludes a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a two-year time extension of the consolidated PUD and a related Zoning Map amendment from the R-5-E to the CR Zone District for Lot 74 in Square 72 approved in Zoning Commission Case No. 06-29, the validity of which was extended by Zoning Commission Order 06-29A. The project approved by the Commission shall be valid until July 12, 2013, within which time an application shall be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than July 12, 2014.

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.

On May 23, 2011, upon the motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, Greg M. Selfridge, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on July 22, 2011.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-40A
Z.C. Case No. 06-40A
Gateway Market Center, Inc.
(Two-Year Time Extension for PUD
@ Square 3587, Lots 5, 800, 802, and 809 and Parcels 129/9 and 129/32)
May 23, 2011

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on May 23, 2011. At the meeting, the Commission approved a request from Gateway Market Center, Inc. (the "Applicant") for a time extension for the consolidated planned unit development ("PUD") for the property consisting of Lots 5, 800, 802, and 809 in Square 3587 and Parcels 129/9 and 129/32, pursuant to Chapters 1 and 24 of the Zoning Regulations (11 DCMR).

FINDINGS OF FACT

1. By Z.C. Order No. 06-40 (the "PUD Order") dated April 24, 2009 and effective April 28, 2009, the Commission approved a PUD for Lots 5, 800, 802, and 809 in Square 3587 and Parcels 129/9 and 129/32 (the "Property"). The PUD Order approved a mixed-use, residential, retail, and office development containing a maximum of 294,092 square feet of gross floor area and constructed to a height of 119 feet. The PUD Order also approved a related map amendment to rezone the PUD site from C-M-1 to C-3-C. Pursuant to Condition No. 17 of the PUD Order, the PUD approval would expire if a building permit application as specified in 11 DCMR § 2409.1 was not filed on or before April 28, 2011.

2. By letter dated and received by the Commission on April 7, 2011, the Applicant requested to extend the validity period of the PUD approval by two years. The request, if approved, would require that an application for building permit be filed no later than April 28, 2013 and that construction must be started no later than April 28, 2014.

3. The Applicant submitted evidence that the project has experienced delays beyond the reasonable control of the Applicant as a result of the nationwide financial crisis and lack of liquidity in the financial markets. The evidence included an affidavit explaining that although the Applicant had financing commitments in place prior to approval of the PUD, those commitments were withdrawn in late 2008 and early 2009, prior to issuance of the PUD Order. The affidavit also detailed the Applicant's efforts since the PUD Order was issued to find sources of financing for the project.

4. The Applicant served a copy of the request on Advisory Neighborhood Commission ("ANC") 5B and ANC 6C, the only two parties in the case. ANC 6C submitted a letter in support of the requested two-year time extension on May 16, 2011. (Exhibit 6.) ANC 5B did not submit a written response.

5. The Office of Planning ("OP") submitted a report dated May 13, 2011, indicating that the Applicant meets the standards of §§ 2408.10 and 2408.11(a) of the Zoning Regulations.

OP thus recommended that the Commission approve the requested two-year PUD extension. (Exhibit 5.)

6. The Commission finds that there has not been a substantial change in the material facts upon which the initial PUD approval was based, and finds that the essential elements of the PUD have not changed. The Applicant has provided substantial evidence that there is good cause for the extension, pursuant to 11 DCMR § 2408.11(a), and the Commission finds that the request for the two-year time extension should be granted.

CONCLUSIONS OF LAW

The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided: (a) the request is served on all parties to the application by the applicant, and all parties are allowed 30 days to respond; (b) there is no substantial change in any material fact upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) the applicant demonstrates with substantial evidence that there is good cause for such extension as provided for in § 2408.11. (11 DCMR § 2408.10.) Subsection 2408.11 provides the following criteria for good cause shown: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or (c) the existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.

The Commission concludes that the application complied with the notice requirements of 11 DCMR § 2408.10(a) by the Applicant serving ANC 5B and ANC 6C with a copy of the application and allowing 30 days for a response by the ANCs.

The Commission concludes that there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD.

The Commission concludes that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(a). Specifically, the Applicant has been unable to obtain sufficient project financing for the PUD, following the Applicant's diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control.

The Commission is required under § 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) (2001)) to give great weight to the affected ANC's recommendations. ANC 6C submitted a letter in support

of the requested extension. (Exhibit 6.) The Commission has given ANC 6C's recommendation great weight in approving this application.

The Commission is required under § 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) to give great weight to OP recommendations. OP submitted a report indicating that the Applicant meets the standards of § 2408.10 and 2408.11(a) of the Zoning Regulations, and therefore recommended that the Commission approve the requested extension. The Commission has given OP's recommendation great weight in approving this application.
Section 2408.12 of the Zoning Regulations provides that a public hearing must be held by the Commission only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11. The Commission concludes that a hearing is not necessary for this request since there are no material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.

The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a two-year extension of the time in which to file a building permit for the construction of a new mixed-use development in Square 3587, which was initially approved in Z.C. Order No. 06-40. The approval of the two-year extension shall be valid until April 28, 2013, within which time an application shall be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than April 28, 2014.

In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq. (the "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.

On May 23, 2010, upon the motion made by Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, Greg M. Selfridge, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on July 22, 2011.