

**THE DEPUTY MAYOR FOR PLANNING
AND ECONOMIC DEVELOPMENT**

NOTICE OF PROPOSED RULEMAKING

The Deputy Mayor for Planning and Economic Development, pursuant to the authority set forth in § 107 of the Inclusionary Zoning Implementation Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. Official Code § 6-1041.07) (“Inclusionary Zoning Act”) and Mayor’s Order 2008-59, dated April 2, 2008, hereby gives notice of intent to adopt a new Chapter 22 entitled “Inclusionary Zoning Implementation” of Title 14 (Housing) of the District of Columbia Municipal Regulations (“DCMR”).

These proposed rules would establish procedures for implementing the Inclusionary Zoning Act and the Inclusionary Zoning Regulations adopted by the Zoning Commission for the District of Columbia and codified in Chapter 26 of Title 11 (Zoning) of the DCMR.

Final rulemaking action shall be taken in not less than sixty (60) days from the date of publication of this notice in the *D.C. Register* and shall be subject to the completion of the Council review required by § 107(b) of the Inclusionary Zoning Act (D.C. Official Code § 6-1041.07(b)).

The Deputy Mayor also intends that the final rules shall not become effective until ninety (90) days after publication of the Notice of Final Rulemaking in the *D.C. Register* in order to allow a transition period between publication and implementation.

Title 14 (Housing) of the DCMR is amended by adding a new Chapter 22 to read as follows:

CHAPTER 22 INCLUSIONARY ZONING IMPLEMENTATION

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2200 GENERAL PROVISIONS

- 2200.1 The purpose of this Chapter is to implement the Zoning Commission’s Inclusionary Zoning Regulations (Title 11 DCMR, Chapter 26) and the Inclusionary Zoning Act.
- 2200.2 Subject to certain exemptions, the Zoning Commission’s Inclusionary Zoning Regulations mandate that, in applicable zone districts, Inclusionary Units be provided in new residential buildings of ten (10) or more dwelling units or when the construction of ten (10) or more dwelling units represents an expansion in the number of dwelling units in an existing residential building of fifty percent (50%) or more.
- 2200.3 The Zoning Commission’s Inclusionary Zoning Regulations establish a formula to determine the minimum and maximum amount of gross floor area that must be reserved for Inclusionary Units, but leave the establishment of maximum prices and rents for the Inclusionary Units to the Council and the Mayor.
- 2200.4 Subject to certain exceptions, the Inclusionary Zoning Act requires Inclusionary Units be sold or leased only to persons authorized by the Mayor at a price or rent no greater than the maximum established by the Mayor.
- 2200.5 The Inclusionary Zoning Act also provides that:
 - (a) No building permit shall be issued for an Inclusionary Development unless the Mayor approves a Certificate of Inclusionary Zoning Compliance and a covenant signed by the Owner of the Inclusionary Development;

- (b) No certificate of occupancy for a Market Rate Unit in an Inclusionary Development shall be issued unless the application includes a written statement signed by the Mayor and dated no earlier than six (6) months before the date of the application indicating that the Inclusionary Development is in compliance with the Inclusionary Zoning Program and the Certificate of Inclusionary Zoning Compliance; and
 - (c) A violation of the Inclusionary Zoning Program constitutes grounds for the revocation of any building permit and certificate of occupancy for the market rate portions of the Inclusionary Development.
- 2200.6 This Chapter implements these aspects of the Inclusionary Zoning Act by establishing, among other things:
 - (a) The process and prerequisites for obtaining building permits and certificates of occupancy for Inclusionary Developments;
 - (b) The process for selecting households for referral to the owner of an Inclusionary Unit; and
 - (c) The responsibilities of and limitations on Inclusionary Unit Owners and Tenants.
- 2200.7 All timeframes established in this Chapter for an Agency to take an action are guidelines only. An Agency's failure to act within a timeframe established in this Chapter shall not constitute a default by the Agency and shall not permit any person to take or refuse to take any action governed by the Inclusionary Zoning Program.
- 2200.8 In computing a period of time specified in this Chapter, calendar days shall be counted unless otherwise provided.
- 2200.9 In computing a period of time specified in this Chapter, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period of time so computed shall be included unless it is a Saturday, Sunday, or official District of Columbia holiday, in which case the period of time shall run until the end of the next day that is neither a Saturday, Sunday, nor official District of Columbia holiday.
- 2200.10 When, under this Chapter, a person has the right or is required to perform an act within a prescribed period of time after the sending of or the date of a notice or other paper, and the paper or notice is sent by mail, three (3) days shall be added to the prescribed period of time.

2200.11 In the event of a conflict between the provisions of this Chapter and the provisions of the Inclusionary Zoning Act or the Zoning Commission's Inclusionary Zoning Regulations, the most stringent provision shall apply.

2201 PREREQUISITES FOR OBTAINING BUILDING PERMITS FOR AN INCLUSIONARY DEVELOPMENT; APPLICATION FOR CERTIFICATE OF INCLUSIONARY ZONING COMPLIANCE

2201.1 No building permit shall be issued for an Inclusionary Development unless the Agency receives and approves an application for a Certificate of Inclusionary Zoning Compliance, signed by the Owner of the Inclusionary Development, demonstrating that the Inclusionary Development will meet the requirements of the Inclusionary Zoning Program.

2201.2 The Inclusionary Development Owner shall file a written application for a Certificate of Inclusionary Zoning Compliance with the Agency no later than the date upon which the first application for a building permit is filed for the Inclusionary Development.

2201.3 The Inclusionary Development Owner shall include with its application for a Certificate of Inclusionary Zoning Compliance payment of an application fee of one hundred dollars (\$100).

2201.4 The Inclusionary Development Owner shall file its application for a Certificate of Inclusionary Zoning Compliance on a form prescribed by the Agency and shall provide such information as is requested on the form.

2201.5 The application form for a Certificate of Inclusionary Zoning Compliance shall include:

- (a) The name of the Inclusionary Development, its marketing name if different, and the apartment house or condominium name, if applicable;
- (b) The street address of the Inclusionary Development;
- (c) The zone district and, if applicable, overlay district in which the Inclusionary Development is located;
- (d) The current and proposed square, suffix, and lot numbers on which the Inclusionary Development will be located;
- (e) A list of all Inclusionary Units in the Inclusionary Development. Each Inclusionary Unit shall be identified by unit number, net square footage, and the number of bedrooms. The list shall also include, and separately identify, any Inclusionary Units that will serve as the location for the offsite compliance of another Inclusionary Development, as approved by the Board

- (f) A certification from the Inclusionary Development’s architect that the size of each Inclusionary Unit is at least the average size of the same type of Market Rate Unit in the development or at least the size indicated in the following table, whichever is lesser:

Types of Dwelling	Type of Unit	Minimum Unit Size (square feet)
Multiple Family Dwelling	Studio/ Efficiency	400
	One Bedroom	550
	Two Bedroom	800
	Three Bedroom	1000
	Four Bedroom	1050
One or Two Household Dwellings	Two Bedroom	1000
	Three Bedroom	1200
	Four Bedroom	1400

- (g) A copy of the site plan, front elevation or block face, and all residential floor plans for the Inclusionary Development. The floor plans shall show the location of each Inclusionary Unit and each Market Rate Unit and shall identify each by unit number;
- (h) A copy of the building plat required by 12A DCMR § 106.1.12;
- (i) An unsigned copy of the Inclusionary Development Covenant described in § 2204 (including the form Inclusionary Unit Covenant described in § 2205, if the Inclusionary Development includes For Sale Inclusionary Units);
- (j) A deed of trust, if required by the Agency pursuant to § 2204.3;
- (k) A plan for the phasing of construction that demonstrates compliance with 11 DCMR § 2605.5, which requires that all Inclusionary Units in an Inclusionary Development be constructed prior to or concurrently with the construction of Market Rate Units, except that in a phased development, the Inclusionary Units shall be constructed at a pace that is proportional with the construction of the Market Rate Units;
- (l) The total land area of all of the lots included in the Inclusionary Development;
- (m) The total gross square footage of the Inclusionary Units in the Inclusionary Development, the net residential square footage of the Inclusionary Development, and the gross residential square footage of the Inclusionary Development;
- (n) The total net floor area that will be set aside for Inclusionary Units as

calculated by multiplying the total gross square footage of the Inclusionary Units required by 11 DCMR § 2603 by the ratio of the net residential square footage to the gross residential square footage of the Inclusionary Development;

- (o) The total gross floor area of Inclusionary Units that will be set aside for Low-Income Households, if such Inclusionary Units are required by 11 DCMR § 2603.3, calculated pursuant to the method set forth in paragraph (n) of this subsection;
- (p) A proposed schedule of standard and upgrade options of finishes, fixtures, equipment, and appliances for both Inclusionary Units and Market Rate Units;
- (q) For each Inclusionary Unit, the approximate date by which the Inclusionary Development Owner will provide a Notice of Availability pursuant to § 2206;
- (r) If construction of the Inclusionary Development will result in the displacement of tenants who are entitled by law to return to their former units, a list of the unit numbers of the Inclusionary Units for which a right of return exists; and
- (s) Such other information as may be requested by the Agency.

2202 REVIEW AND APPROVAL OF APPLICATION FOR CERTIFICATE OF INCLUSIONARY ZONING COMPLIANCE

- 2202.1 If the Agency determines that an application for a Certificate of Inclusionary Zoning Compliance does not demonstrate compliance with the Inclusionary Zoning Program or the information provided is insufficient, the Agency shall provide to the Inclusionary Development Owner a written notice of the deficiency and shall allow the Inclusionary Development Owner a period of time, designated in the written notice, to cure the deficiency.
- 2202.2 If the Inclusionary Development Owner fails to cure the deficiency within the period of time set forth in the written notice, the Agency may deny the application.
- 2202.3 If the application for a Certificate of Inclusionary Zoning Compliance demonstrates compliance with the Inclusionary Zoning Program, and the proposed Inclusionary Development Covenant is satisfactory to the Agency, the Inclusionary Development Owner shall execute and record the approved Inclusionary Development Covenant in the land records of the District of Columbia.
- 2202.4 Following receipt of a copy of the executed and recorded Inclusionary Development Covenant, the Agency shall issue the Certificate of Inclusionary Zoning Compliance.

2203 REQUIREMENT TO UPDATE APPLICATION INFORMATION

An Inclusionary Development Owner shall be under a continuing obligation to update all information provided in its application for a Certificate of Inclusionary Zoning Compliance until certificates of occupancy are issued for all of the Inclusionary Units and Market Rate Units in the Inclusionary Development.

2204 INCLUSIONARY DEVELOPMENT COVENANTS

- 2204.1 The proposed Inclusionary Development Covenant submitted in accordance with § 2201.5(i) shall bind all persons with a property interest in any or all of the Inclusionary Development to such declarations as the Agency may require, but, at a minimum, shall include:
- (a) The present and all future Owners of a Rental Inclusionary Development shall construct or maintain and reserve Inclusionary Units in such number, square footage, and level of finish as indicated on the Certificate of Inclusionary Zoning Compliance and shall rent such Inclusionary Units in accordance with the Inclusionary Zoning Program and the Certificate of Inclusionary Zoning Compliance;
 - (b) The present and all future Owners of a For Sale Inclusionary Development shall construct Inclusionary Units in such number, square footage, and level of finish as indicated on the Certificate of Inclusionary Zoning Compliance and shall sell each Inclusionary Unit in accordance with the Inclusionary Zoning Program and the Certificate of Inclusionary Zoning Compliance;
 - (c) The Inclusionary Development Covenant shall bind all assignees, mortgagees, purchasers, and other successors in interest; and
 - (d) A provision providing for the release or extinguishment of the Inclusionary Development Covenant if the District revokes or rescinds the building permit, the building permit expires, or the Inclusionary Development Owner relinquishes its right to construct under the building permit.
- 2204.2 A proposed covenant for a For Sale Inclusionary Development shall also include a form Inclusionary Unit Covenant to be executed by the first purchaser of an Inclusionary Unit.
- 2204.3 The Agency may require, in its sole discretion, the use of a deed of trust to ensure compliance by an Inclusionary Development Owner with the Inclusionary Development Covenant.

2205 INCLUSIONARY UNIT COVENANTS

- 2205.1 A form Inclusionary Unit Covenant required by § 2204.2 shall bind all persons with a property interest in any or all of the Inclusionary Unit to such declarations as the Agency may require, but, at a minimum, shall require that:
- (a) The Inclusionary Unit Covenant shall be binding upon all assignees, mortgagees, purchasers, and other successors in interest; and
 - (b) Resale of an Inclusionary Unit shall only be to:
 - (1) A Household selected by the Agency or otherwise authorized by this Chapter, at a price that does not exceed the Maximum Resale Price established in accordance with § 2219; or
 - (2) A housing provider designated by the Agency pursuant to § 2222 at a price equal to or greater than the Maximum Resale Price, as may be agreed to by the Inclusionary Unit Owner and the designated housing provider.
- 2205.2 An Inclusionary Unit Covenant shall be executed by the first purchaser prior to or at closing. The Inclusionary Unit Covenant shall be recorded in the land records of the District of Columbia simultaneously with the first deed of conveyance.

2206 NOTICE OF AVAILABILITY

- 2206.1 The provisions of this section govern the process by which:
- (a) The owner of a For Sale Inclusionary Development or For Sale Inclusionary Unit fulfills its obligation to notify the Agency that an Inclusionary Unit is available for purchase; and
 - (b) The owner of a Rental Inclusionary Development fulfills its obligation to notify the Agency that an Inclusionary Unit is available for lease.
- 2206.2 Owners shall provide the notices described in § 2206.1 to the Agency by filing a written Notice of Availability in accordance with the provisions of this section.
- 2206.3 An Inclusionary Development Owner shall file the first Notice of Availability for an Inclusionary Unit at least one hundred thirty-five (135) days before the date the Inclusionary Development Owner expects to apply for a certificate of occupancy for the Inclusionary Unit.
- 2206.4 An Owner of a Rental Inclusionary Unit shall file all subsequent Notices of Availability no later than ten (10) days after a Tenant gives notice of its intent to vacate the Inclusionary Unit, including a notice of intent provided pursuant to §

2217.1, or the Owner becomes aware that the Tenant has vacated the Inclusionary Unit, whichever is earlier.

- 2206.5 An Owner of a For Sale Inclusionary Unit shall file all subsequent Notices of Availability at least ninety (90) days before the date the Owner wishes to have a Household or Designated Housing Provider referred to it for purchase.
- 2206.6 The Notice of Availability shall include:
- (a) The Inclusionary Unit's street address and unit number;
 - (b) The estimated date upon which the Inclusionary Unit will be available for occupancy;
 - (c) If the Inclusionary Unit is a For Sale Inclusionary, a copy of the purchase contract to be furnished to an eligible Household and a copy of the Inclusionary Unit Covenant furnished to the Household;
 - (d) If the Inclusionary Unit is a Rental Inclusionary Unit, a copy of the proposed lease to be furnished to an eligible Household, which shall be for at least a one (1)-year term and shall be renewable at the option of the Tenant unless:
 - (1) The Tenant fails to provide a certification of income in accordance with § 2217.1;
 - (2) The certification of income provided in accordance with § 2217.1 shows that the Household's Annual Income exceeds the maximum allowed for the Inclusionary Unit;
 - (3) The Inclusionary Unit is not the primary residence of all persons who occupy the Inclusionary Unit; or
 - (4) The Agency has advised the Owner that the Tenant made misrepresentations to the Agency that resulted in the erroneous referral of the Tenant;
 - (e) For the initial Notice of Availability filed by an Inclusionary Development Owner or Inclusionary Unit Owner, a list of any optional or required upfront or recurring fees and costs, including but not limited to condominium, cooperative, or homeowner association fees and fees or costs for amenities, services, upgrade options, or parking. For each such fee or cost, the following information shall be provided:
 - (1) The amount of the fee or cost;
 - (2) A description of the fee or cost and how it will be charged; and

- (3) If applicable, the budget for the condominium, cooperative, or homeowner association, the condominium, cooperative, or homeowner association fee for each Market Rate Unit and each Inclusionary Unit, and the formula by which such fee is assessed;
 - (f) For each subsequent Notice of Availability filed by an Inclusionary Development Owner, a list of any required upfront or recurring fees and costs, including but not limited to condominium, cooperative, or homeowner association fees and fees or costs for amenities, services, upgrade options, or parking, and the amount of each such fee or cost; and
 - (g) Such other information as may be required by the Agency.
- 2206.7 The Notice of Availability shall also indicate whether the Owner elects to have Households referred to it before the Agency determines their eligibility for the Inclusionary Unit.
- 2206.8 An Owner who makes an election under § 2206.7 shall be responsible for verifying the Annual Income of each Household referred to the Owner and shall provide with the Notice of Availability the name of the entity that will perform the verification. The Inclusionary Development Owner may use the entity listed in the Notice of Availability unless the Agency disapproves the use of the entity within ten (10) days after the Agency's receipt of the Notice of Availability.
- 2206.9 The Notice of Availability for a For Sale Inclusionary Unit shall include an itemized list of all capital improvements and upgrades made to the Inclusionary Unit that the Owner wishes the Agency to consider when establishing the Maximum Resale Price pursuant to § 2219. The Inclusionary Unit Owner shall document each cost or value claimed with receipts, contracts, or other supporting evidence.
- 2206.10 Within ten (10) business days after the receipt of a Notice of Availability, the Agency shall notify the Owner of the maximum purchase price or rent for each Inclusionary Unit listed in the Notice of Availability.

2207 DETERMINATION OF MAXIMUM PURCHASE PRICE OR RENT

- 2207.1 Except as provided in § 2207.4, the initial maximum purchase price or rent for an Inclusionary Unit shall be the greater of:
- (a) The purchase price or rent in the Rent and Price Schedule in place on the filing date of the application for the Certificate of Inclusionary Zoning Compliance issued for the Inclusionary Development in which the Inclusionary Unit is located; or

- (b) The purchase price or rent in the Rent and Price Schedule in place on the filing date of the Notice of Availability for the Inclusionary Unit, whichever purchase price or rent is greater.
- 2207.2 The maximum purchase price for all subsequent sales of an Inclusionary Unit Owner shall be the Maximum Resale Price determined by the Agency pursuant to § 2219.
- 2207.3 Except as provided in § 2207.4, the maximum rent for all subsequent rentals shall be the rent set forth in the Rent and Price Schedule in place on the date that the Notice of Availability for the Inclusionary Unit is filed.
- 2207.4 If the costs provide in response to §2206.6(e) exceed by ten percent (10%) or more the cost assumptions in the applicable Rent and Price Schedule, the Agency may lower the initial maximum purchase price or initial or subsequent rent to the extent needed to maintain the affordability standard set forth in § 103(a) of the Inclusionary Zoning Act (D.C. Official Code § 6-1041.03(a)) and this Chapter.

2208 CERTIFICATES OF OCCUPANCY FOR INCLUSIONARY UNITS

- 2208.1 An Inclusionary Development Owner shall obtain a certificate of occupancy for each Inclusionary Unit in the Inclusionary Development.
- 2208.2 After the submission of the application for a certificate of occupancy for an Inclusionary Unit, the Agency shall inspect the Inclusionary Unit for compliance with the Certificate of Inclusionary Zoning Compliance and the Inclusionary Zoning Program.
- 2208.3 The Agency shall make good faith efforts to complete its compliance inspection within ten (10) business days after receipt of the Inclusionary Development Owner's notification.
- 2208.4 No certificate of occupancy for an Inclusionary Unit shall be issued by the Department of Consumer and Regulatory Affairs unless a certificate of the Agency indicating that the Inclusionary Unit is in compliance with the Certificate of Inclusionary Zoning Compliance and the Inclusionary Zoning Program has been provided to the Department of Consumer and Regulatory Affairs.

2209 HOUSEHOLDS TO WHOM INCLUSIONARY UNITS MAY BE SOLD OR RENTED

Except as set forth in § 2215, no Owner shall sell or rent an Inclusionary Unit to a Household which has not been referred to the Owner pursuant to the lottery and selection process set forth in §§ 2210 through 2214.

2210 SELECTION PROCESS – REGISTRATION FOR LOTTERIES

- 2210.1 Except as provided in § 2215, Low-Income Households and Moderate-Income Households wishing to purchase or rent an Inclusionary Unit shall first register with the Agency.
- 2210.2 The Agency shall maintain at least the two following registration lists:
- (a) The District List, consisting of Households whose members live in, or at least one (1) of whose members works in, the District of Columbia; and
 - (b) The Miscellaneous List, consisting of Households that do not qualify to be placed on the District List.
- 2210.3 A Household seeking to be placed on a registration list shall provide the following information to the Agency on such form as may be prescribed by the Agency:
- (a) The name, address, and telephone number of the Household member who will serve as the principal contact for the Agency;
 - (b) The Household's size and estimated annual income;
 - (c) If the Household consists entirely of a person enrolled as a full-time student in a college or university, the annual income of the person's parent or guardian; and
 - (d) For each Household member:
 - (i) If employed, the name and address of the employer; or
 - (ii) If a college or university student, the name and address of the college or university.
- 2210.4 Registration shall become effective on the date the application for registration is, after review by the Agency, considered complete and shall expire two (2) years thereafter, unless renewed prior to expiration.
- 2210.5 The Agency shall notify each registrant of the date upon which their registration became effective and the date upon which the registration will expire.
- 2210.6 An application to renew a registration shall indicate any change in any information that was required to be provided in the initial application.

2211 SELECTION PROCESS – CONDUCT OF LOTTERIES

2211.1 No later than ten (10) business days after receiving a Notice of Availability for an Inclusionary Unit, the Agency shall hold a lottery of those Households on the District List that meet the size and Annual Income requirements for the Inclusionary Unit.

2211.2 The Agency shall determine size eligibility based upon the following standards:

Unit Size (Bedroom)	Minimum Number of Persons in Unit	Maximum Number of Persons in Unit
0	1	1
1	1	2
2	2	4
3	4	6
4	6	8
5	8	10
6	10	12

2211.3 For each Inclusionary Unit, the Agency shall randomly select at least four (4) Households through a lottery from the District List. If fewer than four (4) Households on the District List meet the Household size and Annual Income standards applicable to the Inclusionary Unit, the Agency shall hold a lottery from the Miscellaneous List in order to select at least four (4) Households which meet the Household size and Annual Income standards applicable for the Inclusionary Unit.

2211.4 The Households chosen shall then be ranked in the following order:

- (a) Households residing in the District of Columbia, who shall then be ranked by the length of time each has been on the District List;
- (b) Households with a least one (1) member employed in the District of Columbia, who shall then be ranked by the length of time each has been on the District List; and
- (c) Households on the Miscellaneous List, who shall then be ranked by the length of time each has been on the Miscellaneous List.

2211.5 If more than one (1) Household has been on the registration list for the same period of time, their ranking shall be in the order in which the Households were selected in the lottery.

2211.6 If none of the four (4) Households selected through the lottery purchase or rent the Inclusionary Unit, the Agency shall continue to hold lotteries pursuant to the procedures set forth in this section until a Household purchases or leases the Inclusionary Unit.

2211.7 With respect to each Household selected pursuant to a lottery under this section, the Agency shall provide a notice under § 2212 and shall verify the eligibility of the Household to rent or purchase the Inclusionary Unit pursuant to § 2213.

2212 SELECTION PROCESS – NOTIFICATION OF HOUSEHOLDS

2212.1 Not later than ten (10) business days after a lottery is held, the Agency shall provide a notice to each of the Households selected in the lottery of their selection and shall provide to each Household the address, unit type, and maximum rent or purchase price of the Inclusionary Unit for which the lottery was held.

2212.2 The notice shall inform each Household that the Household is required to confirm its interest in the Unit within ten (10) business days after the date of the notice and to provide the following to the Agency within thirty (30) calendar days after the date of the notice:

- (a) A statement that the Inclusionary Unit will be occupied as the primary residence of all members of the Household;
- (b) Evidence that the Household has satisfactorily completed a housing counseling class for homebuyers or renters approved by the Agency;
- (c) All documents requested by the Agency to verify the Household's Annual Income or, if certification of the Households is to be undertaken by the Inclusionary Development Owner or Inclusionary Unit Owner, a certification of the Household's Annual Income from the Inclusionary Development Owner or Inclusionary Unit Owner;
- (d) If purchasing a For Sale Inclusionary Unit, a pre-qualification letter from a lender indicating the Household's credit worthiness and ability to afford the purchase price; and
- (e) Any other documents requested by the Agency.

2212.3 The notice shall also state that the Household must execute a pre-sale contract or lease for the Inclusionary Unit no later than ninety (90) days after the date of the notice.

2212.4 A Household that fails to meet a deadline set forth in §§ 2212.2 or 2212.3 shall be ineligible to purchase or rent the Inclusionary Unit, unless the Agency extends the deadline for good cause shown.

2213 SELECTION PROCESS – VERIFICATION OF HOUSEHOLD ELIGIBILITY

2213.1 No later than sixty (60) days after lottery selection the Agency shall make the following determination as to the first four (4) ranked Household that meet the

deadlines set forth in §§ 2212.2 and 2212.3 and for such additional Households as it considers appropriate:

- (a) That the Household's Annual Income, as verified by the Owner or the Agency, qualifies it as being either a Low-Income Household or Moderate-Income Household;
 - (b) That the Household's size meets the Household size requirements set forth in § 2206.3 and all other applicable criteria set forth in this Chapter;
 - (c) For a For Sale Inclusionary Unit, that the Household will not expend more than forty-one percent (41%) of the its Annual Income on mortgage payments; and
 - (d) For a Rental Inclusionary Unit, that the Household will not expend more than forty-five percent (45%) of its Annual Income on rent and utilities if not included in the rent; and
- 2213.2 If an Owner has elected to screen Households prior to an eligibility determination, the Owner shall provide to the Agency a verification of each Household's Annual Income within thirty (30) days after the Households are referred to the Owner pursuant to § 2214.1. If the Owner does not provide a verification of Annual Income for a Household within this thirty (30)-day period, the time period set forth in § 2213.1 shall be extended, for that Household, for one (1) day for each day by which the Owner exceeds the thirty (30)-day period

2214 REFERRAL OF HOUSEHOLDS; NOTIFICATION OF OWNERS AND HOUSEHOLDS; RENTAL OR SALE TO HOUSEHOLD

- 2214.1 If an Owner has elected to screen Households prior to an eligibility determination, the Agency shall refer the Households selected pursuant to a lottery to the Owner, by providing a notice to both the Households and the Owner, no later than ten (10) business days after the lottery for the Inclusionary Unit. The notice to the Owner shall include the rank of each Household. The notice to a Household shall include the rank of the Household.
- 2214.2 No later than ten (10) days after the Agency makes the determinations required by § 2213, the Agency shall:
- (a) Provide, to an Owner who was referred Households prior to eligibility determinations, a notice listing each Household that was referred to the Owner, whether the Household is eligible or ineligible to purchase or rent the Inclusionary Unit, and the rank of the eligible Households selected pursuant to the lottery;

- (b) Provide, to an Owner who elected not to market the Inclusionary Unit prior to eligibility determinations, a ranked list of eligible Households;
- (c) Provide to each Household a notice stating whether the Household is eligible or ineligible to purchase or rent the Inclusionary Unit and, if eligible, the rank of the eligible Household.

2214.3 An Owner shall not sell, and a Household shall not buy, an Inclusionary Unit until each receives the notice described in § 2214.2.

2214.4 An Owner shall process and approve or disapprove each eligible Household, pursuant to the Owner's rental or sale criteria, in the order of the Household's ranking.

2215 SELECTION PROCESS – EXEMPTIONS FROM REGISTRATION AND LOTTERIES

2215.1 A household displaced from and entitled by law to return to a unit that is an Inclusionary Unit may purchase or lease the Inclusionary Unit, without referral by the Agency through the lottery, subject to all other requirements of law.

2215.2 An Inclusionary Unit Owner may sell an Inclusionary Unit to the Inclusionary Unit Owner's spouse, domestic partner, parent, or child who is eighteen (18) years of age or older, without referral by the Agency through the lottery, if the spouse, domestic partner, parent, or child submits the information and documents required by § 2212.2 and the Agency verifies pursuant to section § 2213 that the spouse, domestic partner, parent, or child is eligible to rent or purchase the Inclusionary Unit.

2215.3 An Inclusionary Unit Owner may sell a For Sale Inclusionary Unit to a Designated Housing Provider if the Designated Housing Provider is referred to the Owner pursuant to § 2222.

2215.4 An Owner may request the Agency to allow the Owner to rent or sell an Inclusionary Unit to a Household that has not registered with the Agency if:

- (a) More than six (6) months has passed since the Notice of Availability was submitted for the Inclusionary Unit;
- (b) No eligible Household or Designated Housing Provider has executed a pre-sale or purchase contract or lease within that period; and
- (c) The Owner submits a written statement that demonstrates good faith efforts on the part of the Owner to sell or lease the unit to a Households or Designated Housing Providers referred by the Agency.

2215.5 If the Agency finds that the criteria set forth in § 2215.4 have been met, a Household identified by the Owner shall submit the information and documents required by § 2212.2 to the Agency.

2215.6 If the Agency verifies pursuant to section § 2213 that the Household identified by the Owner is eligible to purchase or rent the Inclusionary Unit, the Owner may sell or rent the Inclusionary Unit to the Household.

2216 CLOSING PROCEDURES

2216.1 Prior to or at the first closing for an Inclusionary Unit, the Household purchasing the Inclusionary Unit shall execute an Inclusionary Unit Covenant in the same form as was attached to the Inclusionary Development Covenant for the Inclusionary Development.

2216.2 The Closing Agent or first Inclusionary Unit Owner shall record the Inclusionary Unit Covenant in the land records of the District of Columbia prior to or simultaneously with the deed of conveyance.

2216.3 At all subsequent closings for an Inclusionary Unit, the Inclusionary Unit Owner shall provide the purchaser with a copy of the recorded Inclusionary Unit Covenant and the purchaser shall sign a written certification acknowledging receipt of the Inclusionary Unit Covenant.

2216.4 All deeds used to convey an Inclusionary Unit shall attach the recorded Inclusionary Unit Covenant as an exhibit and shall include the following statement in twelve (12) point or larger type, in all capital letters, on the front page of the deed:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS SET FORTH IN THE INCLUSIONARY UNIT COVENANT, DATED AS OF THE _____DAY OF _____, 20__, AND RECORDED ON THE _____DAY OF _____, 20__, IN THE OFFICE OF THE DISTRICT OF COLUMBIA RECORDER OF DEEDS AS INSTRUMENT NUMBER _____, TO THE EXTENT SUCH COVENANT LAWFULLY BINDS THE REAL PROPERTY WHICH IS THE SUBJECT OF THIS DEED.

2216.5 Within ten (10) days after closing, the new Inclusionary Unit Owner shall provide the Agency with a signed copy of the United States Department of Housing and Urban Development Settlement Statement, a copy of the new deed (including the attached Inclusionary Unit Covenant), and a copy of the written certification required by § 2216.3 acknowledging receipt of the Inclusionary Unit Covenant.

2217 RESPONSIBILITIES OF RENTAL INCLUSIONARY DEVELOPMENT OWNERS AND TENANTS; LEASE RENEWALS

- 2217.1 No later than sixty (60) days before each anniversary of the first day of the lease, a Household leasing a Rental Inclusionary Unit shall submit to the Inclusionary Development Owner the following information and documents on or with such form as may be prescribed by the Agency:
- (a) A statement as to whether the Tenant intends to renew the lease; and
 - (b) If the Tenant states that he or she intends to renew the lease:
 - (1) A certification that the Household continues to occupy the unit as its primary residence;
 - (2) The names of each person residing in the unit;
 - (3) All documents necessary for the certification of the Annual Income of the Household; and
- 2217.2 No later than fifteen (15) days before each anniversary of the first day of the lease, a Household leasing a Rental Inclusionary Unit shall submit or cause to be submitted to the Inclusionary Development Owner a certification of the Tenant's Annual Income.
- 2217.3 If a Tenant is ineligible to renew a lease because the Tenant no longer meets the Household size or Annual Income requirements for the Inclusionary Unit, the Inclusionary Development Owner shall provide to the Tenant a notice of the non-renewal of a lease pursuant within ten (10) days after the Tenant provides the information and documents required by § 2217.1.
- 2217.4 If a Tenant is ineligible to renew a lease because the Tenant no longer occupies the Inclusionary Unit as its primary residence or does not meet the Household size or Annual Income requirements for the Inclusionary Unit, the Inclusionary Development Owner shall permit the Household to continue to occupy the unit at the current rent for not less than three (3) and no more than six (6) months after the Inclusionary Unit Owner provides to the Tenant the notice required by § 2217.3.
- 2217.5 If a Tenant does not provide the information and documents required by § 2217.1 in the time period set forth in § 2217.1, the Owner may file a Notice of Availability with the Agency.
- 2217.6 A renewed lease may not require payment of rent greater than the applicable maximum rent set forth in the Price and Rent Schedule in effect on the date the lease is renewed.

- 2217.7 Annually within fifteen (15) days after the anniversary of the issuance date of the certificate of occupancy for a Rental Inclusionary Development, the Owner shall submit a report to the Agency setting forth the following information:
- (a) The number of Rental Inclusionary Units, by bedroom count, that are occupied;
 - (b) The number of Rental Inclusionary Units, by bedroom count, that were vacated during the previous twelve (12) months;
 - (c) For each Rental Inclusionary Unit vacated during the previous twelve (12) months, the unit number of the unit that was vacated, the number of days the unit was vacant (or a statement that the unit is still vacant), and the date on which a Notice of Availability was provided to the Agency pursuant to § 2206;
 - (d) For each occupied Rental Inclusionary Unit, the names of all occupants, the Household size, and the Household's Annual Income as of the date of the most recent Certification of Income;
 - (e) A sworn statement that to the best of the Owner's information and knowledge, the Annual Income and size of each Household occupying each Rental Inclusionary Unit complies with the size and income limits applicable to the Rental Inclusionary Unit; and
 - (f) A copy of each new and revised Certification of Income provided in accordance with § 2217.1.
- 2217.8 An Inclusionary Unit Tenant shall not purchase residential property before the Tenant has provided notice of the intent to terminate their lease of the Inclusionary Unit in accordance with the terms of the lease.

2218 RESPONSIBILITIES OF INCLUSIONARY UNIT OWNERS

- 2218.1 Annually on the anniversary of the closing date, the Owner of a For Sale Inclusionary Unit shall submit to the Agency certification that it continues to occupy the unit as its primary residence. The certification shall be submitted on or with such form as may be prescribed by the Agency.
- 2218.2 An Inclusionary Unit Owner shall not close on the purchase of other residential property before the Owner has sold the Inclusionary Unit in conformity with the requirements of the Inclusionary Zoning Act and this Chapter.

2219 DETERMINATION OF MAXIMUM RESALE PRICE

- 2219.1 The Maximum Resale Price (“MRP”) of a For Sale Inclusionary Unit shall be determined through use of the formula $MRP = (P + V) \times (1 + F)$ (“Formula”), where:
- (a) P = the price the Owner paid for the Inclusionary Unit;
 - (b) V = the value of capital improvements as determined by the Agency pursuant to this section; and
 - (c) F = the decimal equivalent of the percentage by which the Consumer Price Index for All Urban Consumers (Washington-Baltimore) has risen since the prior sale of the Inclusionary Unit.
- 2219.2 For the purposes of determining the value of “V” in the Formula, the following capital improvements made to an Inclusionary Unit after the date of purchase may be included, to the extent they are permanent in nature and add to the market value of the property:
- (a) Structural improvements;
 - (b) Appliances, heating, air conditioning, and hot water equipment; provided, such items shall be depreciated on a ten (10) year straight-line basis from the purchase price;
 - (c) Replacement in kind of equipment, systems, fixtures, or finishes other than appliances, heating, air conditioning, and hot water equipment; provided, such items shall be valued at fifty percent (50%) of their purchase price;
 - (d) Actual and reasonable costs of materials (but not of tools or equipment purchased or used to install the improvements), professional fees, contractor’s costs, the reasonable value of labor performed by the Owner, and permit fees associated with furnishing and installing the capital improvements; and
 - (e) Upgrades, to the extent that the value of such upgrades does not increase the MRP of the Inclusionary Unit above the designated affordability level of the Inclusionary Unit.
- 2219.3 The value of capital improvements may be determined by the Agency based upon documentation provided by the Inclusionary Unit Owner or upon a standard value established by the Agency.
- 2219.4 The Agency may disallow capital improvements if the Agency finds that the capital improvements diminished or did not increase the fair market value of the Inclusionary Unit.

- 2219.5 The Agency may reduce the value of capital improvements if there is evidence of abnormal physical deterioration of, or abnormal wear and tear to, the capital improvement.
- 2219.6 The Owner shall permit a representative of the Agency to inspect the Inclusionary Unit upon request to verify the existence and value of any capital improvements that are claimed by the Owner.
- 2219.7 Normal Owner maintenance, general repair work, and personal or decorative items or work shall not be considered capital improvements under the Formula.
- 2219.8 No allowance shall be made in the Maximum Resale Price for the payment of real estate brokerage fees associated with the sale of the Inclusionary Unit.
- 2219.9 The value of personal property transferred to a purchaser in connection with the resale of a For Sale Inclusionary Unit shall not be considered part of the sales price of the For Sale Inclusionary Unit for the purposes of determining whether the sales price of the For Sale Inclusionary Unit exceeds the MRP.

2220 RENTAL OF A FOR SALE INCLUSIONARY UNIT

- 2220.1 An Inclusionary Unit Owner may temporarily lease a For Sale Inclusionary Unit to a Household referred to it by the Agency in accordance with the provisions of this section.
- 2220.2 The lease term may not exceed twelve (12) months and may not be renewed.
- 2220.3 No more than one (1) temporary rental may occur with a five (5) year period.
- 2220.4 The Owner and Agency shall follow the notice of availability and referral processes set forth in §§ 2206 and 2211 - 2214.

2221 CONVERSION OF A RENTAL INCLUSIONARY DEVELOPMENT TO A FOR SALE INCLUSIONARY DEVELOPMENT

- 2221.1 No condominium or cooperative documents may be filed to convert a Rental Inclusionary Development to a condominium or cooperative until a new application for a Certificate of Inclusionary Zoning Compliance is filed by the Inclusionary Development Owner and approved by the Agency and a Certificate of Inclusionary Zoning Compliance is issued by the Agency pursuant to the provisions set forth in § 2202.
- 2221.2 Prior to the issuance of a Certificate of Inclusionary Zoning Compliance under this section, the Inclusionary Development Owner shall record a new or amendatory Inclusionary Development Covenant, applicable to a For Sale Inclusionary Development, that complies with § 2204.

- 2221.3 The application for a Certificate of Inclusionary Zoning Compliance filed under this section shall demonstrate that the location and size of the Inclusionary Units will not change from those approved under the Certificate of Inclusionary Zoning Compliance issued for the Rental Inclusionary Development.
- 2221.4 Tenants occupying Rental Inclusionary Units shall receive the same notices and have the same opportunity to purchase their unit as is provided in the Rental Housing Conversion and Sale Act of 1980, effective September 10, 1980 (D.C. Law 3-86; D.C. Official Code § 42-3401.01 *et seq.*) (“Conversion Act”).
- 2221.5 The offered sales price for a Rental Inclusionary Unit converted to a For Sale Inclusionary Unit shall not exceed the applicable maximum purchase price stated on the Price and Rent Schedule that is in effect on the date that the Tenant receives the first notice of conversion pursuant to the Conversion Act.
- 2221.6 If the tenant does not purchase the Inclusionary Unit within the time provided in the Conversion Act.

2222 DESIGNATED HOUSING PROVIDERS

- 2222.1 The Agency may authorize housing providers, such as land trusts or qualified nonprofit organizations, to purchase Inclusionary Units for the purpose of reselling the units to Households selected by the Agency in accordance with §§ 2210 through 2213 (“Designated Housing Providers”).
- 2222.2 To be eligible to be a Designated Housing Provider, the housing provider shall demonstrate to the satisfaction of the Agency its ability to acquire, operate, maintain, and manage an Inclusionary Unit satisfactorily on a long-term basis.
- 2222.3 The Agency may consider the relative needs and requirements of the housing providers and their clientele, readiness and ability of the housing provider to purchase and manage an Inclusionary Unit, and the number of units previously obtained by the housing provider in determining whether to authorize a housing provider to act as a Designated Housing Provider.
- 2222.4 The Agency may provide notice to Designated Housing Providers of the availability of an Inclusionary Unit. The Agency may provide the Designated Housing Providers up to ninety (90) days after the date of the notice to enter into a contract with the Owner to purchase the Inclusionary Unit.
- 2222.5 Upon purchase of the Inclusionary Unit, the Designated Housing Provider shall be the Owner of the Inclusionary Unit and shall be subject to the provisions of this Chapter that apply to Owners.

2223 SALE BY HEIRS AND LENDERS

- 2223.1 If an Inclusionary Unit Owner dies, at least one (1) heir, legatee, or other person taking title to the Inclusionary Unit by will or by operation of law shall occupy the Inclusionary Unit or shall provide the Agency with a Notice of Availability in accordance with § 2206.
- 2223.2 In the event of foreclosure, the Inclusionary Development Covenant and Inclusionary Unit Covenant shall not be released and the mortgage holder shall provide the Agency with a Notice of Availability in accordance with § 2206.

2224 VIOLATIONS AND OPPORTUNITY TO CURE

Prior to exercising the authority to revoke a building permit or certificate of occupancy pursuant to § 104 of the Inclusionary Zoning Act, the Agency shall provide to the person who is alleged to have violated the Inclusionary Zoning Act or this Chapter a written notice setting forth with particularity the alleged violation and shall provide to that person at least thirty (30) days to cure the alleged violation. If the person cures the violation within the thirty (30) day period, the Agency shall not exercise its authority to revoke a building permit or certificate of occupancy pursuant to § 104 of the Inclusionary Zoning Act. The Agency may extend the thirty (30) day period for good cause shown.

2225 EFFECTIVE DATE

These rules shall become effective ninety (90) days after the date of publication in the *D.C. Register* of the Notice of Final Rulemaking.

2299 DEFINITIONS

- 2299.1 When used in this Chapter, the following words and phrases shall have the meanings ascribed below:

Agency – the Agency to which the Mayor has delegated the program authority over subject matter being described in the specific text in which the term appears.

Annual Income – annual income as defined in 24 C.F.R. § 5.609 as of [the date of publication of this Chapter in the *D.C. Register*].

Area Median Income – the area median income for a household in the Washington Metropolitan Statistical Area as set forth in the periodic calculation provided by the United States Department of Housing and Urban Development, adjusted for family size without regard to any adjustments made by the United States Department of Housing and Urban Development for the purposes of the programs it administers. Adjustments of Area Median Income for household size shall be made in the same manner as is prescribed in section 2(1) of the Housing

Production Trust Fund Act, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code §§ 42-2801(1)).

Bedroom – a room with immediate access to an exterior window and a closet that is designated as a “bedroom” or “sleeping room” on construction plans submitted in an application for a building permit for an Inclusionary Development.

Designated Housing Provider – an entity authorized by the Agency pursuant to § 2222 to purchase Inclusionary Units from Owners of Inclusionary Developments or Units for sale to Households selected by the Agency.

For Sale Inclusionary Development – the portion of an Inclusionary Development that includes or will include Inclusionary Units that will be sold to Households.

For Sale Inclusionary Unit – an Inclusionary Unit that will be or has been sold to a Household.

Household – all persons who will occupy the Inclusionary Unit, all persons over eighteen (18) years of age whose names will appear on the lease or deed whether or not such persons will occupy the Inclusionary Unit, and the lessee’s spouse or domestic partner and children under eighteen (18) years of age, whether or not such persons will occupy the Inclusionary Unit. A Household may be a single family, one (1) person living alone, two (2) or more families living together, or any other group of related or unrelated persons who share living arrangements.

Inclusionary Development – a development subject to the provisions of the Inclusionary Zoning Program.

Inclusionary Development Covenant – the Inclusionary Development Covenant described in § 2204.

Inclusionary Development Owner – a person, firm, partnership, association, joint venture, or corporation, or government with a property interest in land or improvements that is or will be occupied by an Inclusionary Development, but excluding Inclusionary Unit Owners.

Inclusionary Unit – a dwelling unit set aside for sale or rental to Low-Income or Moderate-Income Households as required by the Inclusionary Zoning Program.

Inclusionary Unit Covenant – the Inclusionary Unit Covenant described in § 2205.

Inclusionary Unit Owner – a Household or Designated Housing Provider that owns an Inclusionary Unit.

Inclusionary Zoning Act – the Inclusionary Zoning Implementation Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. Official Code § 6-1041.01 *et seq.*).

Inclusionary Zoning Program – all of the provisions of the Zoning Commission’s Inclusionary Zoning Regulations, the Inclusionary Zoning Act, and this Chapter.

Low-Income Household – a Household with a total Annual Income equal to or less than fifty percent (50%) of the Area Median Income, adjusted for household size.

Market Rate Unit – a unit in an Inclusionary Development that is not an Inclusionary Unit.

Moderate-Income Household – a Household with a total Annual Income greater than fifty percent (50%) and less than or equal to eighty percent (80%) of the Area Median Income adjusted for household size.

Notice of Availability – the notice required to be provided to the Agency by an Owner in accordance with § 2206.

Owner – both an Inclusionary Development Owner and an Inclusionary Unit Owner.

Rent and Price Schedule – the rent and price schedule published in the *D.C. Register* pursuant to § 103(b) of the Inclusionary Zoning Act (D.C. Official Code § 6-1041.03(b)).

Rental Inclusionary Development – the portion of an Inclusionary Development that includes, or will include, Inclusionary Units that will be leased to Households.

Rental Inclusionary Unit – an Inclusionary Unit that will be or has been leased to a Household.

Tenant – a Household that occupies a Rental Inclusionary Unit.

APPENDIX A

DRAFT MAXIMUM RENT AND PURCHASE PRICE SCHEDULE

This Maximum Rent and Purchase Price Schedule is established pursuant to the Inclusionary Zoning Implementation Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. Official Code § 6-1041.01 *et seq.*) (“the Act”) and the Inclusionary Zoning Regulations adopted by the Zoning Commission for the District of Columbia and codified in Chapter 26 Title 11 of the DCMR.

Multi-Family Inclusionary Developments

Number of Bedrooms	Occupancy Limits	Estimated Utility Allowance	Estimated Condo Fees	50% of AMI Units		80% of AMI Units	
				Maximum Allowable Rent	Maximum Purchase Price	Maximum Allowable Rent	Maximum Purchase Price
Studio	1	\$108	250	\$823	\$94,700	\$1,317	\$169,200
1	1 - 2	\$150	300	\$882	\$96,400	\$1,411	\$176,200
2	2 - 4	\$192	425	\$1,058	\$105,100	\$1,693	\$200,800
3	3 - 6	\$233	525	\$1,223	\$119,100	\$1,956	\$226,200

Single-Family Inclusionary Developments

Number of Bedrooms	Occupancy Limits	Estimated Utility Allowance	Estimated Condo Fees	50% of AMI Units		80% of AMI Units	
				Maximum Allowable Rent	Maximum Purchase Price	Maximum Allowable Rent	Maximum Purchase Price
2	2 - 4	NC	110	\$1,058	\$142,300	\$1,693	\$238,000
3	3 - 6	NC	130	\$1,223	\$164,300	\$1,956	\$274,800
4	4 - 6	NC	150	\$1,270	\$168,500	1247.4	\$283,300

The Maximum Purchase Price or Rent is based on the Washington Metropolitan Statistical Area 2008 Area Median Income of \$99,000 for a family of four (4) as published by the United States Department of Housing and Urban Development. It takes into account an ability to pay thirty percent (30%) of the benchmark income towards the housing cost.

The benchmark income by number of bedrooms is based on an occupancy standard of one (1) person for a studio/efficiency and one and half (1½) persons per bedroom thereafter.

Rents are set five percent (5%) below thirty percent (30%) of the benchmark income to ensure a sufficient number of households within the band of incomes that meets both the program eligibility requirements and the Owner credit worthiness qualification requirements.

Maximum Allowable Rent is equal to the rents published minus utility expenses paid by the tenant for heat, air conditioning, cooking, electricity, or hot water. Utilities are estimated above.

Actual costs to be deducted for each utility are as described in the District of Columbia Housing Authority’s Utility Schedule.

Maximum Allowable Purchase Prices use the following assumptions:

1. A conventional thirty (30) year, fixed-rate, fully amortizing mortgage at the national average mortgage rate as published by the Federal Housing Finance Board at www.fhfb.gov (5.93% as of March 25, 2008) plus a one percent (1%) cushion to protect for future interest rate increases and a five (5%) down payment.
2. Real estate property taxes assessed at the control price at current real estate tax rates and homestead deductions.
3. Condominium fees are estimated at fifty cents (\$0.50) per square foot per month applied to the assumed unit square footages. Single-family homeowner association fees are estimated at ten cents (\$0.10) per square foot per month applied to the assumed unit square footages. Estimated unit sizes are:

Multi-Family Inclusionary Development				Single-Family Inclusionary Development		
Studio	1-Bedroom	2-Bedroom	3-Bedroom	2-Bedroom	3-Bedroom	4-Bedroom
500	600	850	1,050	1,100	1,300	1,500

4. Monthly hazard insurance on single-family units is estimated at one half of one percent (0.5%) of replacement value.

NOTE 1. If the actual homeowner/condominium fee for a specific Inclusionary Unit is more than ten percent (10%) higher than the fee assumed in the Maximum Price or Rent Schedule and/or hazard insurance is not included in the condominium fees, then the actual fees and insurance costs shall be used to determine the maximum sales price of the Inclusionary Unit..

NOTE 2. For unit types larger than listed above contact the Agency.

NOTE 3. NC — Not calculated. Contact the Agency.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than sixty (60) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Martine Combal, Project Manager, Office of the Deputy Mayor for Planning and Economic Development, 1350 Pennsylvania Avenue, NW, Washington, DC 20004. Copies of these proposed rules may be obtained from the Office of the Deputy Mayor for Planning and Economic Development at the same address.

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS**

NOTICE OF PROPOSED RULEMAKING

The District of Columbia Board of Elections and Ethics hereby gives notice of proposed rulemaking action to adopt the following amendments to 3 DCMR Chapter 1, "Organization of the Board of Elections and Ethics," and Chapter 11, "Recall of Elected Officials."

The proposed amendments establish procedures for the conduct of particular aspects of public Board meetings, and clarify that the acceptance of recall measures is conditioned upon the timely filing of pertinent campaign finance documents.

The Board gives notice of its intent to take final rulemaking action to adopt these amendments in not less than 30 days from the date of publication of this notice in the D.C. Register.

Section 102 of Chapter 1 of 3 DCMR, "Meetings of the Board of Elections," shall be amended to read as follows:

- 102.1 Except as provided otherwise by statute, a quorum of the Board shall consist of no less than two (2) members of the Board and shall be necessary to conduct official Board business.
- 102.2 Regularly scheduled Board meetings shall be held on the first Wednesday of each month at a time to be determined by the Board.
- 102.3 Regular meetings of the Board shall be open to the general public.
- 102.4 Notice of all regular meetings of the Board will be published in the D.C. Register and Board's web site.
- 102.5 The Board encourages comments on any issue under the jurisdiction of the Board at its regular meetings and will provide the public with a reasonable opportunity to appear before the Board and offer such comments.
- 102.6 To ensure the orderly conduct of public Board meetings, public comments may be limited with respect to the number of speakers permitted and the amount of time allotted to each speaker; however, the Board will not discriminate against any speaker on the basis of his or her position on a particular matter.
- 102.7 Any member of the public who wishes to comment regarding any agenda item or any issue under the jurisdiction of the Board must notify the Board of his or

her request to do so no later than the close of business on the Monday before a Wednesday Board meeting in a writing which includes:

- (a) Their name;
- (b) Their address; and
- (c) The specific matter they wish to bring before the Board.

- 102.8 The Board may exercise its discretion and call special meetings when necessary with reasonable notice to the public.
- 102.9 Members of the public who wish to submit items for consideration by the Board shall do so one (1) week in advance. Failure to submit an item in advance as required may, within the Board's discretion, result in the matter being continued until the next regularly scheduled meeting.
- 102.10 The Chairperson shall conduct the meetings of the Board. In the absence of the Chairperson, the senior member of the Board shall conduct the meeting.
- 102.11 Each meeting shall begin with the adoption of the agenda, followed by the adoption of any outstanding minutes of previously conducted Board meetings.
- 102.12 The Executive Director, General Counsel, and Director of Campaign Finance shall each present a report of the activities of their respective units and such other reports as may be requested by the Board.
- 102.13 Each Board member may properly make any and all motions.

Section 1100 of Chapter 11 of 3 DCMR, "Commencement of the Recall Process," shall be amended to read as follows:

- 1100.1 In order to commence recall proceedings against an elected official, a registered qualified elector shall file a notice of intention to recall with the Board in accordance with the provisions of this chapter and D.C. Code §1-1001.17 (2001 Ed.).
- 1100.2 In accordance with the provisions of D.C. Code §1-1001.17(a) (2001 Ed.), the Board shall not accept a notice of intention to recall the Delegate to the U. S. House of Representatives.
- 1100.3 In accordance with the provisions of D.C. Code §1-1001.17(c) (2001 Ed.), the Board shall not accept a notice of intention to recall which is filed within the first or last three hundred sixty-five (365) days of the term of an elected official, other than a member of an Advisory Neighborhood Commission, or within the same period after a recall election which was decided in the official's favor.

- 1100.4 In accordance with the provisions of D.C. Code §1-1001.17(c) (2001 Ed.), the Board shall not accept a notice of intention to recall a member of an Advisory Neighborhood Commission, which is filed within the following timeframes:
- (a) During the first six (6) months of the Commissioner's term of office;
 - (b) During the last six (6) months of the Commissioner's term of office; or
 - (c) Within six (6) months after a recall election has been decided in favor of the Commissioner.
- 1100.5 A separate notice of intention to recall shall be filed for each officer sought to be recalled.
- 1100.6 The notice of intention to recall shall contain the following:
- (a) The name and title of the elected officer sought to be recalled;
 - (b) A statement not more than two hundred (200) words in length, which gives the reasons for the proposed recall;
 - (c) The name, telephone number, and residence address of each proposer of the recall;
 - (d) If the officer was elected to represent a Single-Member District, an affidavit that each proposer is a registered qualified elector in the Single-Member District of the commissioner whose recall is being sought;
 - (e) If the officer was elected to represent an election ward or school district, an affidavit stating that each proposer is a registered qualified elector in the election ward or school district of the elected officer whose recall is sought; or
 - (f) If the officer was elected at-large, an affidavit that each proposer is a registered qualified elector of the District.
- 1100.7 Upon submission of a notice of intention to recall, the Board shall issue a receipt to the proposer or his or her representative.
- 1100.8 Within five (5) calendar days of the filing of the notice, the Board shall serve, personally or by certified mail, a copy of the notice of intention on the elected officer sought to be recalled.
- 1100.9 Within ten (10) calendar days after the filing of the notice of intention, the elected officer sought to be recalled may file with the Board a response in

accordance with the provisions of D.C. Code §1-1001.17(d) (2001 Ed.), a copy of which shall be served on the proposer by the Board.

- 1100.10 The proposer of a recall measure for any elected officer, other than a member of an Advisory Neighborhood Commission, shall file a verified statement of contributions with the Office of Campaign Finance.
- 1100.11 For the purposes of this chapter, the term “verified statement of contributions,” in accordance with D.C. Code §1-1001.17(i)(1)(A) (2001 Ed.), shall consist of the following:
- (a) The statement of organization, under D.C. Code §1-1102.04 (2001 Ed.); and
 - (b) The report(s) of receipts and expenditures, under D.C. Code §1-1102.06 (2001 Ed.).
- 1100.12 Upon receipt of each recall measure, the Board shall refuse to accept the measure if the Board finds that the proposer has not filed a verified statement of contributions by no later than ten (10) days after the filing of the recall measure.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments no later than thirty (30) days after the publication of this notice in the D.C. Register. Comments should be sent to Kenneth J. McGhie, General Counsel, D.C. Board of Elections and Ethics, 441 4th Street, NW, Suite 270N, Washington, DC 20001. Copies of the proposed rules may be obtained at cost from the Board at the same address between the hours of 9:00 a.m. and 4:45 p.m.

DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Commissioners of District of Columbia Housing Authority ("DCHA") hereby gives notice of its intent to take final rulemaking action to amend Title 14, Chapter 76 of the District of Columbia Municipal Regulations in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. DCHA's rulemaking authority is found in the District of Columbia Housing Authority Act of 1999 at D.C. Code, § 6-202.

Chapter 76. Housing Choice Voucher Program: Waiting Lists, Local Preferences, and Applicant Selection. This Chapter governs the local preferences for DCHA's voucher program. The proposed amendment would establish two new limited local preferences. One to address chronically homeless families in need of permanent supportive housing and a second to promote independent living by linking long term health care and housing for the elderly and the disabled.

Amendment: Section 7604, Waiting List Preferences, in Chapter 76, Housing Choice Voucher Program: Waiting Lists, Local Preferences, and Applicant Selection, in Title 14, Housing, of the DCMR is amended to read as follows:

7604.4 Limited Local Preferences. The Preferences in this subsection receive priority to the extent of the voucher allocation authorized by the Board of Commissioners:

* * * * *

- (f) Permanent Supportive Housing – Applicants are included under this preference if an applicant is referred to DCHA by an agency of the District of Columbia government as an individual or family in need of permanent supportive housing for chronically homeless individuals and families with histories of homelessness. Up to 350 vouchers are authorized for this purpose.
- (g) Long Term Care Housing – Applicants are included under this preference if an applicant is referred to DCHA by an agency of the District of Columbia government as a person in need of housing with added wrap-around health care and in-home and community based services. The persons are either aged or disabled and desire to maintain their independent living. Up to 100 vouchers are authorized for this purpose.

All persons desiring to comment on the subject matter of this rulemaking should file comments in writing no later than thirty (30) days after the publication of this Notice in the D.C. Register. Comments should be filed with the Office of the General Counsel, DCHA, 1133 North Capitol Street, NE, Suite 210, Washington, DC 20002-7599; copies of these rules may be obtained from DCHA at that same address. Alternatively, copies of the rules can be requested from and comments can be sent to Mashanda Y. Mosley, Assistant General Counsel, Office of the General Counsel, District of Columbia Housing Authority, at MMosley@dchousing.org.

**D.C. DEPARTMENT OF HUMAN RESOURCES
METROPOLITAN POLICE DEPARTMENT**

NOTICE OF PROPOSED RULEMAKING

The Director, D.C. Department of Human Resources, and the Chief, Metropolitan Police Department, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with sections 801 (e), 859 (a), 906 (f), and 957 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-608.01 (e), 1-608.59 (a), 1-609.06 (f), and 1-609.57) (2001 and 2005 Supp.), and Council Proposed Resolution No. 17-553 (deemed approved on February 5, 2008), hereby give notice of the intent to adopt the following rules in not less than thirty (30) days from the publication of this notice in the *D.C. Register*. The purpose of these rules is to amend section 307 of Chapter 3, Residency, of Title 6 of the District of Columbia Municipal Regulations (DCMR), on residency compliance determination hearings. Specifically, section 307.1 of the chapter is being amended to grant the authority to initiate residency investigations to the personnel authority instead of agency heads. Upon approval of the rules by the Council and adoption, these rules will amend Chapter 3, Residency, of Title 6 of the DCMR, published at 37 DCR 851 (January 26, 1990) and amended at 37 DCR 4117 (June 22, 1990), 40 DCR 2485 (April 16, 1993), 47 DCR 2416 (April 7, 2000), 50 DCR 6993 (August 22, 2003), 51 DCR 9309 (October 1, 2004), and 52 DCR 2069 (March 4, 2005).

CHAPTER 3

RESIDENCY

Section 307.1 of Chapter 3 of the D.C. Personnel Regulations is amended as follows:

307 RESIDENCY DETERMINATION HEARINGS

- 307.1 (a) Whenever the personnel authority has reasonable cause to believe that an employee of an agency subject to its personnel authority is not in compliance with the residency or domicile requirements, the personnel authority shall issue to the employee a written notice to show cause why his or her employment should not be forfeited.
- (b) Whenever an agency head has reasonable cause to believe that an employee of the agency is not in compliance with the residency or domicile requirements, the agency head shall notify the personnel authority, and request that the personnel authority issue to the employee a written notice to show cause why his or her employment should not be forfeited.

Comments on these proposed regulations should be submitted, in writing, to Ms. Brender L. Gregory, Director, D.C. Department of Human Resources, 441 4th Street, N.W. Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these proposed regulations are available from the above address.

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, DC 20005**

NOTICE OF PROPOSED RULEMAKING

**FORMAL CASE NO. 712, IN THE MATTER OF THE INVESTIGATION OF
THE PUBLIC SERVICE COMMISSION'S RULES OF PRACTICE AND
PROCEDURE**

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to § 2-505 of the District of Columbia Official Code, of its intent to adopt the following amendments to Chapter 3 of Title 15 of the District of Columbia Municipal Regulations, commonly referred to as the "Consumer Bill of Rights" ("CBOR").¹ The Commission will take final rulemaking action not less than forty-five (45) days after publication of this notice in the *D.C. Register*.

2. The proposed amendments update the existing CBOR, which was developed to address the provision of utility services in a traditionally regulated environment, to reflect the competitive nature of the energy and telecommunications industries and to provide appropriate safeguards for consumers who purchase services in this new, more competitive environment. When approved, these amendments will: promote administrative efficiency; create uniformity of requirements and responsibilities for the utilities, competitive energy and telecommunications service providers, and consumers; and inform members of the public of their rights and responsibilities regarding electric, natural gas, and telecommunications services in the District of Columbia.

Proposed Amendment: **The present Chapter 3 is repealed in its entirety and substitute the following Chapter 3 to replace it:**

CHAPTER 3 CONSUMER RIGHTS AND RESPONSIBILITIES

Secs.

300	Purpose and Applicability
301	Energy Meter Locations
302	Utility Meter Reading Requirements

¹ District of Columbia Official Code, 2001 Ed. § 2-505. The Commission previously had the first NOPR published in 51 *D.C. Register* 11065-11152 (2004) with an ANOPR published in 53 *D.C. Register* 7657-7716 (2006), and a third NOPR was published in 54 *D.C. Register* 7292-7353 (2007). In an effort to make this the best document possible, the Commission has made a few substantive modifications to the proposed rules and is again publishing another NOPR.

303	Meter Read by Customers
304	Billing
305	Payments
306	Deferred Payment Agreements
307	Deposits
308	Use of Customer's Information
309	[Reserved]
310	Grounds for Disconnection
311	Procedures for Utility Disconnection
312	Personal Contact Before Utility Disconnection
313	Field Service Identification and Payment Procedures
314	Disconnection of Utility Service
315	Reconnection of Service
316	Customer Discontinuance of Service
317-319	[Reserved]
320	Customer Inquiries and Complaints
321	Publication of Consumer Pamphlet
322	Public Access to Rules and Rates
323	Office of Consumer Services
324	Formal Complaints
325	Formal Hearing Procedures
326	Decision and Appeals
327	Customer Protection Standards Applicable to Energy Suppliers
328	Customer Protection Standards Applicable to Telecommunications Service Providers
329-397	[Reserved]
398	Waiver
399	Definitions

300 PURPOSE AND APPLICABILITY

300.1 Technological changes, new federal and District of Columbia laws, and the actions of the Public Service Commission have created competitive natural gas, electricity and telecommunications service markets in the District of Columbia providing residential consumers with new choices. Consumers have access to an array of competitive Service Provider services as well as continued access to the regulated services of Utilities. The purpose of this chapter is to set forth residential consumer rights, responsibilities and rules for the initiation and acquisition of services, such as, but not limited to Meter reading, Billing, Deposits, Disconnections and Reconnections of service and the resolution of Complaints between residential consumers and a Utility, Energy Supplier or Telecommunications Service Provider.

300.2 This chapter applies to those Residential Services regulated by the Public Service Commission ("Commission") provided by Electric, Natural Gas

and Telephone Utilities, and Residential Services provided by Energy Suppliers and Telecommunications Service Providers licensed or certified by the Commission.

300.3 No residential Customer shall be discriminated against or penalized by a Utility, Energy Supplier or Telecommunications Service Provider for exercising any right granted by this chapter.

300.4 Utilities, Energy Suppliers or Telecommunications Service Providers shall not discriminate against any Customer based wholly or partly on the race, color, creed, national origin, geographic location, sex, or sexual orientation of the Customer or for any arbitrary, capricious, or unfairly discriminatory reason.

301 ENERGY METER LOCATIONS

301.1 Meters shall be located outdoors whenever possible unless extraordinary circumstances prevent it.

301.2 When an indoor electric meter installation is replaced due to modifications in electric service equipment by the utility it shall be relocated outdoors at no expense to the customer. The cost of connecting the Meter to the customer's electric service panel shall remain with the customer.

301.3 Whenever a new natural gas or electric service line is installed or an existing natural gas or electric service line is replaced, the Meter shall be placed outdoors at no expense to the Customer. However, Meter relocation and house piping costs incurred for the convenience of the Customer shall be at the Customer's expense and shall be calculated in accordance with the Commission's approved Tariff for this service.

301.4 If a Meter is located where it is inaccessible for purposes of maintenance, the Customer must grant access to the Meter for maintenance or service Disconnection within the provisions of subsection 310.1. The Customer shall bear the cost of relocating the Meter if it must be moved due to the Customer's affirmative denial of access to the Meter.

302 UTILITY METER READING REQUIREMENTS

302.1 Natural Gas and Electric Utilities, if applicable, shall schedule residential Meters for readings at regular monthly intervals and read within three (3) Business Days of the scheduled date unless the Meter is inaccessible, extreme weather exists, or in the event of other extraordinary conditions.

303 METERS READ BY CUSTOMERS

- 303.1 Whenever a Meter reader is on the premises and cannot make an actual reading, the Utility shall provide Customers with an electronic or telephonic means to report a Customer Meter reading. The Utility shall furnish a Customer a Meter reading card upon request.
- 303.2 Any Natural Gas or Electric Utility Customer may routinely read his/her own Meter and report the reading to the Utility by the means stated in subsection 303.6, so long as the usage is reported accurately and on the schedule specified by the Utility. A Customer's Bill based on a reading by the Customer is subject to increase or decrease based upon later actual reading by the Utility.
- 303.3 If a Utility determines that actual Meter readings have not been made of the Customer's Meter after two (2) consecutive Billing Cycles, the Utility shall provide the Customer with the means to read and report the meter reading to the Utility, as provided in subsection 303.6. The Customer's Meter reading shall be used for billing purposes, except in the following circumstances:
- (a) There has been an actual reading of the Meter by the Utility;
 - (b) The Meter reading has not been timely forwarded to the Utility; or
 - (c) The Customer's reported reading varies significantly from the Utility's estimate of usage; if this occurs, the Utility is required to make an actual reading within seven (7) Business Days unless the Customer does not allow access.
- 303.4 At a Utility's request, the Customer shall provide access to the Meter in order for the Utility to verify the accuracy of readings reported under this subsection. This subsection shall not prevent a Utility from reading Meters on a regular basis.
- 303.5 If a Utility's estimate is used in lieu of the reading submitted by the Customer, the Utility shall make an actual Meter reading when the Meter is accessible.
- 303.6 The Utility shall provide the Customer with instructions on proper Meter reading, the date the Meter must be read and the date the Customer must report a Meter reading to the Utility. A Customer can report a Meter reading by any of the following methods:
- (a) Telephone or telecommunications device;

- (b) Internet;
- (c) Postage prepaid Meter reading card supplied by the Utility; or
- (d) Such other technological means generally available to the Customer and approved by the Commission.

303.7 Upon a Customer initiating service, and annually thereafter, the Utility shall provide information regarding Customer meter readings, including instructions on how to read the Meter and how to obtain the date on which the Meter should be read and the date by which the Customer Meter reading must be returned to the Utility.

304 BILLING

304.1 A Customer shall be provided a Bill at least once during each Billing Cycle, unless otherwise agreed to by the Customer.

304.2 An energy Bill shall be based upon an actual Meter reading, estimated Meter reading or Customer Meter reading, except as outlined in subsections 303.3(c) and 304.3.

304.3 Each estimated energy Bill shall be clearly and conspicuously identified as such. An estimated energy Bill may be rendered only in the following circumstances:

- (a) When a Meter is not scheduled to be read, and the Customer Meter reading is not timely reported;
- (b) When a Meter has not been read due to the inaccessibility of the Meter, extreme weather, or other conditions; or
- (c) When a Customer's reading varies significantly from the estimated usage.

304.4 Whenever three (3) or more estimated energy Bills have been rendered in succession, an actual meter reading shall be rendered at the Customer's request at a mutually agreeable time.

304.5 The date of rendition of a Bill shall be the date stated on the Bill.

304.6 If a billing rendition date is changed by more than seven (7) Days, the Customer shall be provided written or electronic notice within ten (10) Days prior to the date of the change.

304.7 Each energy Bill rendered shall state clearly the following information:

- (a) The beginning and ending Meter reading of the Billing Cycle and the difference between the two Meter readings, if such data is available;
- (b) The beginning and ending dates of the Billing Cycle;
- (c) The due date by which payment must be made and the date after which the payment will be considered overdue or late;
- (d) The previous balance, if any;
- (e) Stated separately, the amount due for residential Utility services, Distribution Service Charge, Transmission service, Purchased Gas Charge, Natural Gas supply service or Generation Service Charge, as applicable;
- (f) A listing of the amount due for other tariffed Charges, as applicable;
- (g) A listing of the amount due for non-tariffed Charges, as applicable;
- (h) The total amount due;
- (i) The rate elements of the generation, transmission and Distribution Service Charges identified for basic Utility service;
- (j) Amount of all payments or other credits made to the Customer's Account during current Billing Cycle;
- (k) Any amount overdue;
- (l) The statement, "Any inquiry or complaint about this bill should be made prior to the due date, in order to avoid late charges";
- (m) The address and telephone number to which an inquiry or Complaint should be directed;
- (n) As applicable, the statement: "[This Utility] is regulated by the Public Service Commission of the District of Columbia";
- (o) The name, address and telephone number of the Public Service Commission;

- (p) Whether the Bill is based upon an actual Meter reading, a Customer Meter reading, or an estimate of usage, if such data is known;
- (q) The name, address and telephone number of The Office of the People's Counsel;
- (r) Any other information that the Public Service Commission may from time to time require;
- (s) If applicable, the energy Utility shall include an itemization of usage, payments made, and account balance; and
- (t) If applicable, the energy Utility shall include either an energy usage history or a gas usage profile.

304.8 Each telecommunications Bill rendered to a residential Customer shall state clearly the following information:

- (a) The telephone number and Account number for which the Bill is rendered;
- (b) The due date;
- (c) The previous balance, if any;
- (d) The beginning and ending dates of the Billing Cycle;
- (e) The total amount due for local service Charges, identified as the total amount due for local Charges, taxes, and other applicable surcharges, as well as toll service, except where provided as part of a Bundled Service;
- (f) An itemization of all authorized Charges for message toll calls, including the date, time, duration, type, place and telephone number called when available, and the applicable Charge, except where provided as part of a Bundle of Services;
- (g) A monthly or semi-annual itemization and amount for optional recurring charges selected by the customer;
- (h) The address and telephone number to which an inquiry or Complaint should be directed;

- (i) A statement indicating that [This Utility] and some of the services contained in the Bill are regulated by the Public Service Commission of the District of Columbia;
- (j) The name, address and telephone number of the Public Service Commission of the District of Columbia;
- (k) The name and address of the Office of the People's Counsel; and
- (l) Any other information that the Public Service Commission may from time to time require.

304.9 An unpaid balance may be transferred from a Customer's former residential Account in the District of Columbia to the Customer's next residential Account in the District of Columbia.

304.10 A Natural Gas or Electric Utility may, at the election of a Customer, bill a Customer in accordance with a level payment billing program or budget payment plan. The Utility shall inform the Customer of this option and explain how the monthly payments will be calculated. Prior to implementation of the plan, the Utility shall provide the Customer with the following information in written or electronic form:

- (a) An acknowledgement that the Customer shall be on the plan effective the next available Billing Cycle;
- (b) An estimate of the Customer's use on an annual basis and an explanation of how the equal monthly payment has been calculated;
- (c) The final Bill for the plan effective period will reflect the last level payment installment or budgeted payment installment adjusted for any difference between actual and budgeted usage. Amounts overpaid will be credited to the Customer's Account or refunded, if requested by the Customer. Amounts underpaid that are equal to or greater than the monthly payment can be paid in up to three (3) monthly installments; and
- (d) Final Bills are issued when either a Customer account is closed or in the case of Customers with third party suppliers, the supply contract is closed or changed. Any budget plan in effect will be reconciled upon rendering of the final Bill. Amounts underpaid will be due within 20 days of final Bill rendering. Amounts overpaid will be refunded to the Customer.

- 304.11 The Natural Gas or Electric Utility shall perform a periodic analysis of the Customer's plan and notify the Customer, within twenty-one (21) Days thereafter, if actual usage varies significantly from that upon which the plan was based and give the Customer an opportunity for revision of the plan.
- 304.12 A Utility may require an Applicant for service to pay a previously unpaid Account balance for the same class of service furnished to the Applicant in the District of Columbia.
- 304.13 In the case of a transfer of a previously unpaid District of Columbia residential Account balance for service rendered in the District of Columbia to a Customer's Account pursuant to this chapter, the Utility and Telecommunications Service Provider shall notify the Customer in writing of the reason for the charge, what the Customer must do to obtain or continue service, and how the Customer can dispute the charge.
- 304.14 An Energy Supplier may include other Bill components. If an Energy Supplier elects to bill for multiple services, each service shall be clearly identified on the Bill.
- 304.15 Every Bill rendered by an Energy Supplier for residential natural gas or electric service, whether a separate Bill or a Consolidated Bill, shall include the following Bill components, if such data is available to the Energy Supplier:
- (a) Meter readings, such that, current, prior months and differences between the two may be presented in the same place;
 - (b) Meter reading date, which may be presented in a single place on a consolidated Bill;
 - (c) Number and kind of units measured;
 - (d) Applicable rate schedule;
 - (e) Taxes and surcharges, with each appropriate tax and surcharge separately displayed;
 - (f) Notice of potential late payment charges;
 - (g) Total amount due, provided that for consolidated bills, subtotals for the Company's and the energy supplier's portions of the Bill and a total amount due;

- (h) Payment due date, provided that where Bills are separate, then payment dates may differ;
- (i) For estimated Bills, a distinctive indication where a Bill is based on an estimated Meter reading;
- (j) Business address and telephone numbers for billing inquiries;
- (k) Conversion from Meter reading units to billing units, including computation;
- (l) Service address, shown on first page of Bill;
- (m) Mailing address, shown on first page of Bill;
- (n) The Company account number, shown on each page if multiple pages;
- (o) Customer name and account number, shown on each page if multiple pages;
- (p) Bill payment plans, where applicable;
- (q) Emergency number for Washington Gas or PEPCO, whichever is applicable;
- (r) Required notices, e.g., Customer Bill of Rights, legal notices, which may be included as an insert;
- (s) Next Meter reading date;
- (t) Prior Bill amount and summary of energy supplier and/or Washington Gas or PEPCO charges;
- (u) Disclosure of previous payment activity;
- (v) Meter number/identification;
- (w) Number of days in Billing Cycle;
- (x) Billing Cycle;
- (y) Public Service Commission's address and telephone number;
- (z) Address to which payments are to be sent;

- (aa) How the check should be made payable;
- (bb) Collection messages;
- (cc) Bill step computations;
- (dd) Date of Bill issuance; and
- (ee) The Office of the People's Counsel's address and phone number.

305 PAYMENTS

- 305.1 Payments shall be due within twenty (20) Days after the date the Bill is rendered. If the due date falls on a non-business Day, the due date shall be the next Business Day.
- 305.2 The date of payment shall be considered as the Day the payment is received at the offices of the Utility, Energy Supplier, Telecommunications Service Provider or an authorized agent. The Customer shall provide an accurate account number for prompt payment posting. Payments received without sufficient information to identify the Customer's account will be credited when the Utility is able to identify the account. Payments submitted electronically, by phone or computer must be received within the Utility's established computer processing times for same day posting.
- 305.3 No late payment charge shall be levied on any amounts, including deferred payment installments, paid by the due date, or on amounts in dispute before the Commission. Utilities may levy a late payment charge on amounts that are not paid by the due date. Such late payment charges shall be established by tariffs in accordance with the procedure required by the Commission.
- 305.4 Unless the Customer designates otherwise, Customer payments shall be applied in the following order: first to the applicable Utility for arrears for Commission regulated Charges, oldest item first; next to arrears for non-regulated Charges (i.e., Energy Supplier Charges for gas supply or electricity); next to the Utility for current Commission-regulated Charges; finally, to current non-regulated Charges.
- 305.5 For Energy or Telecommunications services, subsections 305.1 through 305.4 shall not apply when the Utility, Energy Supplier or Telecommunications Service Provider and the Customer agree to different payment terms.

306 DEFERRED PAYMENT AGREEMENTS

306.1 The Utility, Energy Supplier or Telecommunications Service Provider and the Customer may enter into a Deferred Payment Agreement (DPA). The Utility shall include the Utility, Energy Supplier or Telecommunications Service Provider past due balances as part of its DPA. No Charges, other than those accrued as of the date of settlement, and no interest shall be charged as part of the Deferred Payment Agreement.

306.2 Every DPA negotiated and agreed to between the Customer and the Utility, Energy Supplier, or Telecommunications Service Provider shall be provided to the Customer in writing within ten (10) Business Days and shall include the following information:

- (a) The date of the DPA;
- (b) The amount overdue and the payment terms of the DPA, including down payment amount and installment terms;
- (c) The process that the Utility, Energy or Telecommunications Service Provider will follow, including a notice of Disconnection, to enforce the terms of the DPA;
- (d) A Customer's failure to make a scheduled payment under the DPA when due is a default and places the Account in delinquent status as of the date of default. Late payment Charges shall apply to any default of a DPA and may cause the DPA to become void; and
- (e) The DPA shall state that all subsequent Bills must be paid on or before the due date. Failure to pay all such subsequent Bills as stated will cause the DPA to become void. In such cases, normal collection activities, up to and including Disconnection may resume.

307 DEPOSITS

307.1 A Utility shall not require a cash deposit or guarantee from a person who has never been a Customer of the Utility.

307.2 A Utility shall not require a cash Deposit as a condition of new or continued Utility service on the basis of income level, home ownership, residence location, race, color, creed, sex, age, or national origin.

307.3 A utility shall not require a cash Deposit as a condition of new service to a person who has been a Customer of a utility before, except under the following circumstances:

- (a) The service of the Customer has been disconnected for nonpayment of a past due balance not in dispute within the previous twelve (12) months; or
- (b) The Customer has in an unauthorized manner, used, diverted or interfered with the service of the utility situated or delivered on or about the Customer's premises within the twelve (12) months immediately preceding the Customer's request for new service; provided, that the following requirements are met:
 - (1) The Customer's service was last disconnected for this reason within the last five (5) years and that the Utility had so notified the Customer in writing, either by U.S. mail or electronically, to this effect; or
 - (2) The Customer either did not file a Complaint with the Commission regarding the Disconnection; or, if a Complaint was filed, final administrative action was taken thereon unfavorable to the Customer.
- (c) The Customer's Account has been delinquent in excess of sixty (60) Days within the previous twelve (12) months; or
- (d) The Customer has an outstanding balance due the utility for utility services. In any such event, the provision of new service may be conditioned upon payment of the outstanding balance.

307.4 When a Deposit is required as a condition of new service to a former Customer, the Customer shall be notified in writing of the reason therefore and the amount of Deposit required.

307.5 A Utility shall not require a cash Deposit as a condition of continued service to a Customer, except under the following circumstances:

- (a) Utility service at the Customer's residence has been used, interfered with, or diverted in an unauthorized manner within the previous twelve (12) months; or
- (b) The Customer's Account has been delinquent in excess of sixty (60) days within the previous twelve (12) months.

307.6 When a Deposit is required of a Customer with service connected, the Customer shall be notified in writing of the reason therefore, the amount of Deposit required, the date due (not less than fourteen (14) days from the date of the first written notice), and that it may be paid in installments.

- 307.7 No Deposit for Utility service shall exceed the lesser of \$100 or 2/12th the estimated annual Bill. The Utility shall notify the Customer in writing of the reason for the Deposit, the amount, date by which it must be paid, the fact that it may be paid in installments, and the payment options for the Deposit. If the Deposit requirement is thirty-five dollars (\$35.00) or more, the Deposit may be paid in a minimum of three equal monthly installments with the first installment due prior to reconnection.
- 307.8 Each Utility shall be liable for interest on Deposits held from the date the Deposit is made until the date the Deposit has been refunded, or until an effort has been made to refund the Deposit. Each Utility shall pay simple interest on deposits with the rate being established not later than January 15th of each year, equal to the average annual yields of one-year Treasury bills for September, October, and November of the preceding year.
- 307.9 The Deposit with accrued interest shall be credited to any final Bill and any remaining balance shall be returned to the Customer.
- 307.10 A Deposit and accrued interest shall be refunded promptly or credited to the Customer's account by the Utility upon payment by the Customer of all proper Charges for Utility service for twelve (12) consecutive months.
307. 11 A Utility shall maintain a record of all Deposits, showing the customer's name and address or other identifying data, the amount of the Deposit, the date it was paid, and the interest earned and paid thereon.
307. 12 Each Customer posting a Deposit shall receive confirmation containing, at a minimum, the following information:
- (a) The Customer's name;
 - (b) The date of the payment;
 - (c) The amount of payment; and
 - (d) A statement of the terms and conditions applicable to Deposits.
- 307.13 When a customer is entitled to a return of a Deposit it shall be paid upon presentation of proper identification or verification of the account information.
- 307.14 An Energy Supplier may require a Deposit from any Customer if authorized by its license.

- 307.15 In lieu of a cash deposit a Utility, Energy Supplier or Telecommunications Service Provider may offer to accept a written guarantee of payment from a responsible party. A responsible party shall include any customer of the Utility, Energy Supplier or Telecommunications Service Provider whose account has not been delinquent during the preceding twelve (12) months. A Utility, Energy Supplier or Telecommunications Service Provider is not obligated to accept a written guarantee from a party who is not a Customer. The Utility, Energy Supplier or Telecommunications Service Provider shall not require a written payment guarantee from any Customer ready, willing and able to make a deposit as authorized by this chapter.
- 307.16 A guarantee shall be in writing on a form approved by the Commission and shall contain the following provisions unless otherwise agreed to by the Utility, Energy Supplier or Telecommunications Service Provider and the guarantor:
- (a) That it is for an initial term of one (1) year;
 - (b) That the guarantor agrees to pay the Utility, Energy Supplier or Telecommunications Service Provider within ten (10) days of demanding the balance outstanding in the guaranteed account upon termination of service to the account. The guarantor shall be liable only for amounts accruing to the account of the customer during the term of the guarantee;
 - (c) That upon failure of the guarantor to satisfy a written demand within ten (10) days, the Utility Energy Supplier or Telecommunications Service Provider shall include the amount in the guarantor's next monthly billing. In such event, the amount transferred to the guarantor's bill shall be considered to have been incurred in providing service to the guarantor. The guarantor shall have the same right to challenge an account balance as is enjoyed by the customer. Should the guarantor receive service from another service provider other than the Utility, Energy Supplier or Telecommunications Service Provider, that is a party to the guarantee, the Utility, Energy Supplier, or Telecommunications Service Provider may pursue its right to recover under applicable District of Columbia law. That, notwithstanding the terms of such guarantee, the guarantee agreement shall terminate upon satisfactory payment by the Customer of all proper charges for services for a period of twelve (12) consecutive months. Payment is deemed satisfactory if the Customer's service is not terminated involuntarily, or if the Customer's account has not been delinquent for an excess of sixty (60) days within the previous twelve (12) months. The Utility Energy Supplier or Telecommunications Service Provider may withhold the release of the guarantor

pending the resolution of any dispute regarding the Customer's account or amounts transferred to the guarantor's account; and

- (d) Prior to the signing of a guarantee agreement, a Utility Energy Supplier or Telecommunications Service Provider employee shall explain to the potential guarantor the consequences of the agreement. The employee shall obtain written acknowledgement from the guarantor that the oral explanation took place.

307.17 The deposit and guarantee provisions of this section shall apply only to those cases in which the Utility, Energy Supplier or Telecommunications Service Provider requests a deposit from a Customer.

308 USE OF CUSTOMER'S INFORMATION

308.1 An Applicant or a Customer need not disclose his or her Social Security number to the Utility, Energy Supplier, or Telecommunications Service Provider to obtain or maintain service. Upon requesting a Customer's social security account number, the utility shall inform the Customer that the provision of the number is voluntary and will not affect the provision of service to that Customer.

308.2 A Utility, Energy Supplier or Telecommunications Service Provider shall not disclose information that reveals the status of the Account of any individual Customer without the Customer's consent or upon dictate of lawful authority. A Utility, Energy Supplier or Telecommunications Service Provider may rely upon written or oral representation of the Commission or the Office of the People's Counsel that consent has been granted.

308.3 Unless a Customer consents in writing, Utility, Energy Supplier or Telecommunications Service Provider may not disclose or use information that is (1) about the Customer, and (2) was supplied to the Electric or Natural Gas Utility or Energy Supplier by the Customer for any purpose other than the purpose for which the information was originally acquired.

308.4 The restrictions in §§308.2 and 308.3 above do not apply to lawful disclosures for bill collection, credit rating reports, or to assist Customers who have had their service involuntarily disconnected. It shall be the responsibility of the Utility, Energy Supplier or Telecommunications Service Provider to obtain and maintain the written consent referred to in §§308.2 and 308.3 above. This information shall be made available to the Commission upon request.

309 [RESERVED]

310 **GROUNDS FOR DISCONNECTION**

310.1 A Utility may disconnect service for any of the following reasons:

- (a) The Customer does not pay;
- (b) The Customer does not enter into a DPA or breaches an applicable DPA;
- (c) Service is being used but no occupant or other person has applied for Customer status at the location;
- (d) There is unauthorized use, diversion or interference with utility service on or about the customer's premises;
- (e) The Customer fails to allow access to the premises to inspect, service, install, replace, read, or remove a Meter or remote recording device or allow access to other equipment, when the Utility has requested access in writing;
- (f) There is an unsafe condition or an adverse effect on the integrity of an energy or telecommunications delivery system or violation of a government statute, regulation or Commission-approved Tariff provision;
- (g) The Utility has reason to believe that there is fraud or that the Customer has misrepresented his or her identity in order to obtain Utility service;
- (h) Application for utility service was made in the name of an individual who is not an occupant of the dwelling unit without disclosure of the individual's actual address and without written authorization by such individual;
- (i) Application for utility service was made in the name of a third party without disclosing that fact or without bona fide authority from the third party;
- (j) Application was made by an individual for the purpose of assisting another occupant of a dwelling unit to avoid payment of that occupant's prior outstanding bill;
- (k) Application was made by an individual who cannot legally enter into or contract for service, such as an un-emancipated minor; or

- (l) Failure to comply with an order of the Commission.

310.2 A Natural Gas or Electric Utility shall not initiate Disconnection of service or disconnect service without the consent of the Customer in the following circumstances:

- (a) The amount overdue stated on the Disconnection notice includes an unpaid amount owed from a different Account, unless the amount was properly transferred to the Customer's Account balance; or an amount owed from Estimated Bills, unless the Utility has attempted reasonable alternatives to obtain a reading of the Meter; or
- (b) Failure of a Customer to pay for merchandise, appliances or nonresidential Utility services.

310.3 Disconnection of natural gas or electric utility service for non-payment of Bills, failure to post cash Security Deposit, or failure to comply with the terms of a DPA where natural gas or electricity is used as the primary source of heating the residence is prohibited:

- (a) On any day when the National Weather Service forecast for the following 24 hours for the District of Columbia forecasts that the temperature will be thirty-two (32°) degrees Fahrenheit or below; or
- (b) On any day preceding a holiday or a weekend when the National Weather Service forecast indicated that the temperature will be thirty-two (32°) degrees Fahrenheit or below during the holiday or weekend.

311 PROCEDURES FOR UTILITY DISCONNECTION

311.1 A Utility shall postpone the Disconnection of service for a reasonable time not to exceed twenty-one (21) Days if the Utility is provided with a physician's certificate or notice from a public health official which states that Disconnection would be detrimental to the health and safety of a bona fide occupant of the premises; provided that the Customer enters into a DPA. The postponement may be extended for one (1) additional period of not more than twenty-one (21) Days by renewal of the certificate or notice.

311.2 A Utility shall not disconnect service when a dispute involving the Account in question has been filed with the Office of Consumer Services

and the dispute is still pending at the Public Service Commission, provided, that payments are made for amounts not in dispute.

- 311.3 A Utility shall not disconnect Residential Service unless a Disconnection notice has been sent to the Customer at the billing address by either first class mail or other technological means at least fifteen (15) Days prior to the date of proposed Disconnection. The Utility providing telecommunications services shall not suspend Residential Service unless a suspension notice has been sent to the Customer at the billing address by either first class mail or other technological means at least ten (10) Days prior to the date of proposed suspension. Any notice required to be sent to a Customer prior to Disconnection or suspension of service may be sent along with the Bill for service; however, the notice of Disconnection or suspension of service must be on the first page of the Bill and shall be in bold print. Upon request of the Customer, a duplicate copy of the notice shall be sent by either first class mail or Internet or other technological means to a designated third party. The third party assumes no obligation for the Customer's Account.
- 311.4 Nothing in this section shall preclude a Utility from taking immediate action necessary to correct any condition which threatens the health or safety of the Customer, the public or the integrity of the Utility's distribution system or action taken in cooperation with civil or law enforcement authorities. However, where that corrective action is taken, the Utility shall not thereupon discontinue service to any Customer whom it believes to be responsible for creation of that condition until it has complied with the notice provisions of this section. The notice and reconnection required by this rule shall not be required in the event that service has been disconnected for theft of services, unauthorized use, diversion or interference with utility service on or about the Customer's premises.
- 311.5 The disconnection notice shall state the following information:
- (a) The Customer's name, address and Account number;
 - (b) The address where service is to be discontinued, if different;
 - (c) The Charges for reconnection of service, if any;
 - (d) A statement of the total amount due, if applicable;
 - (e) The reason for the proposed Disconnection of service;
 - (f) The earliest date on which service will be disconnected in the absence of payment or adjustment;

- (g) The telephone number and address of the Utility, and an invitation to contact the Utility to resolve the matter;
- (h) The Customer's right to delay Disconnection of service for medical reasons;
- (i) The possibility of deferred payments; and
- (j) The right to file a complaint with the Public Service Commission, and the availability of legal representation and assistance by the Office of the People's Counsel and the address and telephone number of the Office of the People's Counsel.

311.6 Utility service shall not be disconnected and shall be restored if disconnected where a Customer has established or is reinstated to a DPA for utility charges that are the basis of the notice of Disconnection and the Customer has not defaulted on such DPA.

311.7 A Utility shall not disconnect service for the period after 5:00 p.m. Thursday and before 8:00 a.m. Monday, and it may not disconnect on a legal holiday, or on a Day that the Utility is closed to the public, except as provided in subsections 311.8 and 311.9.

311.8 A Utility may disconnect service on Friday or Saturday if the following applies:

- (a) The Meter is located on the inside of the premises or is otherwise not readily accessible; and
- (b) The Utility has previously and unsuccessfully attempted to gain access to the premise as stated in subsection 310.1(e), on at least two (2) week days.

311.9 Subsections 311.7 and 311.8 shall not apply to service disconnections to abandoned buildings, where the customer has requested disconnection in circumstances of unsafe conditions or of theft of natural gas or electricity, or to disconnect telephone service where there is evidence of toll abuse or fraud.

312 PERSONAL CONTACT BEFORE UTILITY DISCONNECTION

312.1 A Utility shall make, at minimum, two (2) attempts to contact the Customer prior to Disconnection as specified in this section.

- 312.2 At least two (2) Days before the date set for Disconnection of service, a Utility shall make reasonable efforts to contact the Customer, by telephone, in person or other technological means, to advise of the pending action and what steps must be taken to avoid Disconnection.
- 312.3 Immediately preceding the physical Disconnection of natural gas or electric service, the representative of the Utility designated to perform that function shall make a reasonable effort to identify himself or herself to the Customer or other responsible person then on the premises and announce the purpose of his or her presence; a telephone Utility shall make a second attempt to contact the customer.
- 312.4 If contact has not been made as provided in §312.2 and the Customer or other responsible Person is not on the premises, Disconnection of natural gas or electric service shall not occur. The field service representative shall leave a notice reasonably calculated to be seen by the Person residing in the house in the same manner as the notice required by §314, indicating that service may be disconnected as soon as the next Business Day unless outstanding Bills are paid.
- 312.5 The Utility shall not deliver more than two (2) consecutive notices of Disconnection for past due Bills without attempting contact with the Customer as required by subsections 312.1 and 312.2.

313 FIELD SERVICE IDENTIFICATION AND PAYMENT PROCEDURES

- 313.1 The field representative shall produce an identification badge containing the Utility's name and logo, the field representative picture and full name, and, if applicable, the representative shall wear a company uniform bearing the company's name and logo.
- 313.2 The natural gas or electric field service representative shall have a statement of the amount due and inquire whether the Bill has been paid. If evidence is presented which reasonably indicates that the Bill has been paid, that a DPA has been entered into, that the Bill is currently the subject of a pending proceeding before the Commission, or that the Customer has demonstrated a medical emergency consistent with the provisions of this chapter, service shall not be disconnected.
- 313.3 The natural gas or electric field service representative shall be authorized to accept payment. If payment in full of all Charges due and owing is tendered, service shall not be disconnected. Tender of payment by personal check shall be accepted unless the Customer has within the past twelve (12) months paid the Utility with a check not honored by a bank.

313.4 The natural gas or electric field service representative shall seek authorization from his or her supervisor to accept partial payments or to override his or her orders to disconnect service upon a reasonable explanation by the Customer of the delinquency.

314 DISCONNECTION OF UTILITY SERVICE

314.1 If the requirement to make an attempt to contact a Customer is satisfied, the Utility may disconnect service to a residential Customer on the date specified in the notice or within a reasonable time thereafter.

314.2 When natural gas or electric service is disconnected, the Utility shall leave a notice reasonably calculated to be seen by Persons residing on the premises stating that service has been disconnected and the address and telephone number of the Utility where the Customer may arrange to have service restored. The notice shall also state procedures to be followed where a medical or safety emergency exists on the premises.

315 RECONNECTION OF SERVICE

315.1 A Utility shall reconnect service within twenty-four (24) hours of cure of the cause for Disconnection.

315.2 The Utility may Charge the Customer for reconnection of service in an amount authorized by the Commission.

316 CUSTOMER DISCONTINUANCE OF SERVICE

316.1 A Customer shall be permitted to discontinue service with a Utility either by telephone, in writing, or in person at the business office of the Utility, provided that the Customer contacts the Utility at least three (3) Business Days before the date discontinuance is desired and grants access to discontinue the service.

316.2 The Customer shall be responsible for all electricity and natural gas consumed for three (3) Business Days after contacting the Utility pursuant to section 316.1, unless the Utility obtains an actual meter reading sooner than the third Day.

316.3 The Customer shall be responsible for all telephone Charges due for the period service has been rendered.

317-319 [RESERVED]

320 CUSTOMER INQUIRIES AND COMPLAINTS

- 320.1 This section applies to Utility companies, Energy Suppliers and Telecommunications Service Providers. A Utility, Energy Supplier or Telecommunications Service Provider shall, in accordance with this section, establish written procedures that will ensure the prompt, efficient, and thorough receipt, investigation and, where possible, resolution of all Customer inquiries, service requests and Complaints regarding residential Utility, Energy Supplier or Telecommunications Service Provider services and Charges.
- 320.2 Qualified Utility, Energy Supplier and Telecommunications Service Provider personnel shall be available and prepared at all times during during normal business hours to receive and discuss Customer inquiries, Service requests and Complaints. All Utility, Energy Supplier and Telecommunications Service Providers shall make necessary arrangements to ensure that Spanish language-speaking personnel are made available to assist the Spanish speaking public or maintain a toll-free or local telephone number for Customer service inquires from such persons.
- 320.3 Supervisory personnel shall be available during normal business hours to discuss Customer complaints that are not resolved through contact with customer service representatives.
- 320.4 Qualified personnel authorized to enter into a DPA on behalf of the Utility, Energy Supplier or Telecommunications Service Provider shall be available during normal business hours.
- 320.5 Every Utility, or Telecommunications Service Provider that provides distribution services or telecommunications services to a customer shall have qualified personnel available at all times to respond to Customer calls regarding interruption of service due to the existence of emergency conditions. This provision does not apply to any service provider that does not, as a matter of regular business practice, provide for the remediation of emergency conditions.
- 320.6 When a Complaint cannot be resolved between the Customer and his or her Utility, Energy Supplier or Telecommunications Service Provider, the Utility, Energy Supplier or Telecommunications Service Provider shall inform the Customer of the right to contact the Commission for resolution. The Utility, Energy Supplier, and Telecommunications Service Provider shall also advise the Customer of the availability of OPC to assist in resolving a dispute before the Commission.

- 320.7 In every dispute between a Customer and the Utility, Energy Supplier or Telecommunications Service Provider, the first attempt at resolution shall be made directly between the parties unless the Utility, Energy Supplier or Telecommunications Service Provider has been notified that the Customer is represented by counsel.
- 320.8 When the Utility, Energy Supplier or Telecommunications Service Provider concludes that there is a mistake in an amount billed, the Utility, Energy Supplier or Telecommunications Service Provider shall adjust the amount due, and shall reflect the adjustment during the next Billing Cycle or as soon as reasonably possible.
- 320.9 A Utility, Energy Supplier, or Telecommunications Service Provider and a Customer may agree upon a DPA to pay any amount due the Utility or service provider. No charges, other than those accrued as of the date of settlement, and no interest shall be charged to the Customer as part of the DPA.
- 320.10 When a Utility, Energy Supplier, or Telecommunications Service Provider cannot resolve a dispute with a Customer, the Utility, Energy Supplier, or Telecommunications Service Provider shall refer the Customer to the Commission for resolution.

321 PUBLICATION OF CONSUMER PAMPHLET

- 321.1 The Utilities, Energy Suppliers, and Telecommunications Service Providers shall each, individually prepare a pamphlet in English and Spanish in layman's terms summarizing the rights and responsibilities of Customers in accordance with these and other applicable rules. The text of each pamphlet is subject to prior Commission approval and pre-publication comment of the People's Counsel.
- 321.2 The pamphlet shall be available at every Utility, Energy Supplier and Telecommunications Service Provider location open to the general public.
- 321.3 The pamphlet will be provided upon request at no charge to Customers. Each new Customer shall be offered a pamphlet free of charge.
- 321.4 The pamphlet shall cover, if applicable, the following items:
- (a) Billing procedures and estimation standards;
 - (b) Methods for a Customer to verify billing accuracy;
 - (c) Customer's right to have Meter tested free of charge by the utility once every twelve (12) months as well as a referee Meter test pursuant to 15 DCMR §2368 *et seq.*;

- (d) Customer payment standards and procedures;
- (e) Security Deposit;
- (f) Disconnection and reconnection of service;
- (g) Inquiry, service and complaint procedures;
- (h) Public Service Commission Consumer Complaint resolution procedures and the availability of assistance and legal representation by the Office of the People's Counsel;
- (i) The availability of DPA for payment of Bills or Deposits; and
- (j) Customer access to information required to be made available to them.

321.5 The cover of the pamphlet shall indicate conspicuously that the pamphlet is provided in accordance with the rules of the Commission and shall indicate in English and Spanish that a Spanish version is available upon request.

321.6 Each Utility, Energy Supplier, or Telecommunications Service Provider shall have accessible during business hours a Spanish-speaking interpreter or maintain a toll free or local telephone number for Spanish-speaking persons who seek information about the rights and responsibilities of Customers, services, and programs of the service provider.

322 PUBLIC ACCESS TO RULES AND RATES

322.1 Every Utility, Energy Supplier, or Telecommunications Service Provider shall keep available for free public inspection during normal business hours in every office open to the general public, copies of this chapter, the Utility, Energy Supplier, or Telecommunications Service Provider's schedule of rates, and its terms and conditions of service.

322.2 Every Utility, Energy Supplier or Telecommunications Service Provider shall have available translation services during normal business hours for the translation of its Tariff to Spanish at no cost to the Customer.

322.3 Suitable signs shall be posted at each office open to the public calling attention to the public that the items are available for inspection. Upon request, the Utility or Service Provider shall provide a copy of this chapter and advise Customers where copies of rate schedules and general service provisions may be obtained.

323 OFFICE OF CONSUMER SERVICES

- 323.1 There is established within the Public Service Commission an Office of Consumer Services.
- 323.2 The Office of Consumer Services shall do the following:
- (a) Answer inquiries regarding residential utility service, the services provided by each Energy Supplier and Telecommunications Service Provider and the procedures for resolving disputes;
 - (b) Assist in the informal resolution of Customer complaints and disputes that have not been resolved under the Utility's or Energy Supplier's or Telecommunications Service Provider's own procedures; and
 - (c) Refer to the Commission for formal adjudication any Customer's complaint that cannot be resolved informally.
- 323.3 Any applicant for utility, energy or Telecommunications services, or the Applicant's or Customer's designated representative, as the case may be, may complain to the Commission concerning a Deposit requirement, the service provided, or a Utility or an Energy Supplier or Telecommunications Service Provider's Bill. Should a party other than the Applicant, Customer of record, or the Office of the People's Counsel file such a Complaint, the Applicant or Customer of record shall file a notarized letter authorizing the designee to act on his or her behalf, and the individual or entity shall file a notice that authorizes it to act on the Applicant's or Customer's behalf.
- 323.4 If a Complaint addresses a matter that has failed to be resolved under the Utility's, Energy Supplier's or Telecommunications Service Provider's procedures, the Office of Consumer Services shall handle the matter as an Informal Complaint for resolution. If the Complaint has not been referred to the Utility, Energy Supplier or Telecommunications Service Provider of the service in question, the matter shall be referred to the Utility, Energy Supplier or Telecommunications Service Provider for an attempt at direct resolution. In every case of a dispute between a Customer and a Utility, Energy Supplier or Telecommunications Service Provider, the first attempt at resolution shall be made directly between the parties.
- 323.5 The Utility, Energy Supplier or Telecommunications Service Provider shall respond to the Informal Complaint or similar Customer related referral to the Office of Consumer Services within fourteen (14) Business

Days or within such time as shall be specified by any extension of time that may be granted by that office. If the Complaint or matter is not resolved within that time, the Utility, Energy Supplier or Telecommunications Service Provider shall refer the matter back to the Office of Consumer Services.

323.6 If the Office of Consumer Services handles a matter informally, the office shall notify the Utility, Energy Supplier or Telecommunications Service Provider by telephone, in writing or other technological means to investigate the matter and attempt through mediation to resolve the matter.

323.7 If the Office of Consumer Services determines that a matter cannot be resolved informally, then within five (5) Business Days, the Office of Consumer Services shall notify the Complainant in writing and invite the Complainant to file a Formal Complaint with the Commission. The Utility, Energy Supplier or Telecommunications Service Provider shall be copied on this notification. The notification shall:

- (a) State that the Complainant has the right to file, at no cost, a Formal Complaint, if he or she so desires;
- (b) State that a Formal Complaint must be filed within fourteen (14) Days of the date of mailing of the notification or the matter shall be dismissed;
- (c) Indicate the availability of assistance and legal representation by the Office of the People's Counsel and the address and telephone number of the Office of the People's Counsel;
- (d) Indicate that the Complainant may be represented by him or herself, by counsel, by the Office of the People's Counsel, or by a third party of the Complainant's choosing; and
- (e) Set forth the Commission's Formal Complaint and hearing procedures.

324 FORMAL COMPLAINTS

324.1 A Formal Complaint shall be in writing, signed by the Complainant or legal counsel, and shall state facts necessary to state a claim upon which relief may be granted and the specific relief requested. The Complainant or legal counsel shall submit the Complaint in a format approved by the Office of Consumer Services or consistent with the requirements set forth in Chapter 1 of the Commission's Rules of Practice and Procedure, as

applicable. 15 D.C.M.R. § 100 *et seq.* The Office of Consumer Services, or the Customer's designated representative, may assist in completing a Complaint. The Complaint shall be filed with the Office of the Commission Secretary.

- 324.2 If a review of the Complaint by the Office of Consumer Services determines that a complaint should be revised to more clearly or fairly set forth the matter at issue, the complainant shall be so notified and offered assistance by the OPC or the Office of Consumer Services to amend the Complaint.
- 324.3 Within two (2) Business Days of the filing of the Complaint, the Office of the Commission Secretary shall notify and provide the affected Utility, Energy Supplier or Telecommunications Service Provider a copy of the Complaint in writing by facsimile, U.S. mail or other technological means. Each Utility, Energy Supplier and Telecommunications Service Provider shall provide the name, address, and telephone number of its designated contact Person or office for delivery of such notification.
- 324.4 A written answer to the Complaint shall be filed with the Commission within fourteen (14) Days from the date of notice, setting forth the Utility's, Energy Supplier's or Telecommunications Service Provider's position with respect to the allegations contained in the Complaint. The Utility, Energy Supplier or Telecommunications Service Provider shall also serve a copy of its answer on the Customer or Customer's Designated Representative or their legal counsel.

325 FORMAL HEARING PROCEDURES

- 325.1 A formal hearing shall, if appropriate, be scheduled within forty-five (45) Days of the filing of the Complaint answer. Except in special cases, hearings shall be held during business hours of the Commission. The Commission shall designate a hearing officer who has not participated in the investigation of the Complaint to preside over the proceeding.
- 325.2 If the Formal Complaint fails to state all the facts necessary to state a claim upon which relief may be granted, the Hearing Officer may order the Complainant to amend the Complaint or may dismiss the complaint.
- 325.3 The Commission shall provide notice of the hearing by personal service, by first-class mail or other technological means, as authorized by the Commission, to the Customer and the Customer's Designated Representative and to the Utility, Energy Supplier or Telecommunications Service Provider. Service shall be made by first-class mail postage prepaid at least fourteen (14) days prior to the hearing date unless the parties agree on a shorter time. The notice shall also state that in the event that the

Complainant fails to attend a scheduled hearing without evidence of good cause, the hearing officer may dismiss the Complaint with prejudice. The hearing officer may reschedule any hearing to a date or time agreed upon by the parties or, upon notice and for good cause shown, at the request of any party.

- 325.4 A party requesting a second continuance will be required to provide good cause for the continuance. If the party is the Complainant and he or she does not provide good cause, as determined by the hearing officer, the Complaint may be dismissed, with prejudice. If the party is a Utility, Energy Supplier or Telecommunications Service Provider and it fails to provide good cause, the matter may be heard, without continuance. The hearing officer may, at his or her discretion, postpone or adjourn a hearing for reasonable cause. If a hearing is continued, adequate notice shall be provided to the parties.
- 325.5 In the event the Complainant fails to attend any scheduled hearing without good cause, the hearing officer may dismiss the Complaint with prejudice.
- 325.6 In the event a Utility, Energy Supplier or Telecommunications Service Provider fails to attend a scheduled hearing without good cause, the hearing officer may hear evidence and render a decision.
- 325.7 Upon a reasonable request from each other, the parties shall, within the timeframe prescribed in the Commission's rules in Chapter 1, provide all information they have relevant to the matters at issue in the Complaint including relevant documents, Account data, files and the names of witnesses. Nothing herein shall preclude a party from filing a request or motion to compel responses to information requests.
- 325.8 Parties may examine any relevant records of the Commission. However, information deemed to be confidential may be reviewed in a manner that is consistent with the Commission's Rules of Practice and Procedure.
- 325.9 On any issue or procedure where Chapter 3 is silent, the hearing officer may at his or her discretion utilize Chapter 1 regulations as appropriate.
- 325.10 Parties may represent themselves or be represented by counsel, conservator, legal guardian or someone with power of attorney. If a complainant proceeds *pro se*, the hearing officer may construe the pleadings liberally. If it appears to the hearing officer that a party appearing without an attorney should be represented by an attorney, the hearing officer shall suggest that the party secure counsel or contact the Office of the People's Counsel concerning representation and allow a reasonable time to secure such representation.

- 325.11 Parties shall have the right to present evidence, call witnesses, and present written and oral argument.
- 325.12 Witnesses shall testify under oath, and the parties shall have the right to examine and cross-examine all witnesses.
- 325.13 The hearing officer may, in his or her discretion, limit any line of questioning, testimony and the time for argument.
- 325.14 Unless otherwise ordered by the hearing officer, the Complainant's witnesses shall testify first, followed by the Utility's, Energy Supplier's or Telecommunications Service Provider's witnesses. A reasonable opportunity will be afforded all parties to present rebuttal evidence.
- 325.15 The hearing officer may elicit testimony from any witness regarding the issue(s) in dispute.
- 325.16 The hearing officer has the obligation, especially when a Complainant is not represented by counsel, to ensure that all material facts are developed to the fullest extent consistent with his or her responsibility to preside impartially throughout the proceeding.
- 325.17 The formal rules of evidence shall not apply, but the hearing officer shall exclude irrelevant or unduly repetitious evidence.
- 325.18 Parties may stipulate to any facts, and such stipulation shall be put into evidence.
- 325.19 All proceedings shall be recorded or transcribed by a certified court reporter. The transcriptions shall be made available promptly to any party upon request, at the party's expense.

326 DECISION AND APPEALS

- 326.1 Within thirty (30) Days after the close of the record, the hearing officer shall issue a written decision which states the issues and makes findings of fact, conclusions of law, and his or her disposition of the matter.
- 326.2 When reviewing the matter for disposition, the hearing officer has available the following remedies:
- (a) Upon a factual finding of a complainant's meritorious claim, the hearing officer may award, as the facts in each individual case may warrant, a refund to Complainant for overpayment to a Utility, Energy Supplier, or Telecommunications Service Provider; a credit to Complainant's account with a Utility, Energy Supplier, or

Telecommunications Service Provider; a reduction in the amount owed on a Bill to a Utility, Energy Supplier, or Telecommunications Service Provider; or any other equitable or injunctive relief as permitted by these rules;

- (b) In no instance may a hearing officer award a Complainant compensatory or punitive damages; and.
- (c) Complaints requesting monetary damages as the sole basis for relief may be dismissed with prejudice by the hearing officer for failure to state a claim upon which relief may granted.

- 326.3 In cases involving billing disputes in which the hearing officer has concluded that all or part of the amount in dispute is owed, the hearing officer may, for good cause stated in the decision, direct that the amount found outstanding be paid in installments.
- 326.4 Copies of the hearing officer's decision shall be served upon the parties either personally, by regular mail or other technological means on the Day the decision is issued, together with instructions on how to appeal the decision to the Commission and indicating the last date the appeal may be filed.
- 326.5 The decision of the hearing officer shall be final if there is no appeal to the Commission within the time specified in this section.
- 326.6 Any party may appeal the hearing officer's decision to the Commission by filing a Petition for Review with the Commission Secretary's Office within ten (10) Days of personal service or service by other technological means or twelve (12) Days of service by mail of the decision.
- 326.7 The appeal shall be signed by the party or his or her designated representative, identifying the decision appealed and specifying the grounds on which the appeal is based.
- 326.8 The appealing party shall serve the opposing party with a copy of the petition for review within one (1) Day of the date of its filing with the Commission. Service may be made personally, by first class mail or other technological means.
- 326.9 The opposing party's response or cross-appeal shall be filed within seven (7) Days of personal service or other technological means and ten (10) Days of service by first class mail.

- 326.10 Within ten (10) Days of the filing of a Petition for Review, the record shall be prepared, certified as complete and forwarded by the Commission Secretary to the Commission.
- 326.11 The Commission shall review the decision and rule on the Petition for Review within thirty (30) Days after the record is prepared, certified as complete and forwarded by the Commission Secretary.
- 326.12 Upon review of the record, and after giving consideration to the matters raised on appeal in the Petition for Review, the Commission shall:
- (a) Adopt the decision of the hearing officer;
 - (b) Issue a Commission decision;
 - (c) Remand the matter to the hearing officer for further proceedings; or
 - (d) Take such other action as the Commission may deem appropriate.
- 326.13 If the Commission is unable to render a decision pursuant to 326.12 within thirty (30) Days, then the hearing officer's decision becomes the final decision of the Commission. The decision will become final unless a tolling order is issued by the Commission extending the time for the Commission's decision.
- 326.14 Any party may request reconsideration of a final Commission decision within thirty (30) Days of the issuance of the decision. The filing of such request shall act as a stay upon the execution of the order or decision of the Commission until the Commission takes final action; provided, that upon written consent of the Utility, Energy Supplier, or Telecommunications Service Provider such order or decision shall not be stayed unless otherwise ordered by the Commission. The Commission, within thirty (30) Days after the filing of the request for reconsideration, shall issue an order either granting or denying the request. In granting the request, the Commission shall, either with or without hearing, rescind, modify, or affirm its order or decision. If the Commission is unable to render a decision within thirty (30) Days, and does not issue a tolling order, then the decision of the hearing officer becomes final and is appeal able pursuant to § 326.15.
- 326.15 Review of a final Commission decision shall be to the District of Columbia Court of Appeals pursuant to D.C. Code §§ 34-604 and 34-605 (2001). An appeal of any order of the Commission cannot be made unless a request for reconsideration shall have been first made pursuant to section

326.14. Any Person affected by a final order or decision of the Commission may, within sixty (60) Days after final action of the Commission upon request for reconsideration, file with the Clerk of the District of Columbia Court of Appeals a petition of appeal setting forth the reasons for such appeal and the relief sought; at the same time such appellant shall file with the Commission notice in writing of the appeal together with a copy of the petition filed in the Court of Appeals.

327 CUSTOMER PROTECTION STANDARDS APPLICABLE TO ENERGY SUPPLIERS

327.1 This section sets forth billing, Deposit, Enrollment, Termination of Contract, supplier switching, advertising and minimum Contract standards that apply to Energy Suppliers, Marketers, Aggregators, and Consolidators licensed to provide competitive electric and gas services by the Public Service Commission of the District of Columbia. If a Customer has a Complaint about an alleged violation of this section, the Complaint procedures in § 320 of these regulations shall apply.

327.2 An Energy Supplier may not engage in a marketing, advertising, Solicitation or trade practice that is unlawful, misleading, or deceptive as set forth in D.C. Code §28-3904.

327.3 An Energy Supplier shall not engage in Cramming.

327.4 An Energy Supplier shall not engage in Slamming.

327.5 Any prohibition regarding the disclosure of Account status and Customer information should not preclude Energy Suppliers from obtaining or providing Account status and Customer information for acquisition or sale of a book of business as long as the review of such information during a proposed acquisition or sale is subject to confidentiality agreements.

327.6 Any advertisement of energy supply that contains specific environmental claims must be supportable by documentation.

327.7 Any Solicitation of an energy supply that contains any specific offering to a residential Customer must at a minimum include the following:

- (a) The Energy Supplier's name, address, telephone number, and web site address, if applicable;
- (b) The Energy Supplier's District of Columbia license number in a clear and conspicuous manner;

- (c) The price offered for natural gas supply or electricity supply including all fixed and variable components and any restrictions on the time period the advertised price will be in effect;
- (d) A statement that the advertised price is only for the specified natural gas supply or electricity supply and does not include any additional tax, Utility Distribution Service Charge, or other Utility fee or Charge;
- (e) Any minimum Contract duration necessary to obtain an advertised price;
- (f) A statement of minimum use requirements, if any; and
- (g) If the advertisement offers several services and does not break out individual prices for the services, the following disclaimer must accompany the advertisement: "Disclaimer: This offer includes several services at a single price. You should compare this price to the total of the prices you currently pay for each of the individual services."

327.8 An electricity supply or gas supply Contract with a Customer shall, at a minimum, contain the following material terms and conditions:

- (a) A list and description of the Contract services;
- (b) A statement of minimum use requirements, if any;
- (c) A description of any time of use restrictions, including the time of Day or season;
- (d) A price description of each service, including all fixed and variable costs;
- (e) A notice that the Contract does not include Utility Charges;
- (f) A billing procedure description;
- (g) In the case of consolidated billing, a notice that the Customer acknowledges that Customer billing and payment information may be provided to the Energy Supplier;
- (h) A statement of Contract duration, including initial time period and any rollover provision;

- (i) A Deposit requirement, if any, including: the amount of the Deposit; a description of when and under what circumstances the Deposit will be returned; a description of how the Deposit may be used; and a description of how the Deposit will be protected;
 - (j) A description of any fee or Charge and the circumstances under which a Customer may incur a fee or Charge;
 - (k) A statement that the Energy Supplier may terminate the Contract early including the circumstances under which early cancellation by the Energy Supplier may occur; the manner in which the Energy Supplier shall notify the Customer of the early cancellation of the Contract; the duration of the notice period before early cancellation; remedies available to the Customer if early cancellation occurs;
 - (l) A statement that the Customer may terminate the Contract early including the circumstances under which early cancellation by the Customer may occur; the manner in which the Customer shall notify the Energy Supplier of the early cancellation of the Contract; the duration of the notice period before early cancellation; and remedies available to the Energy Supplier if early cancellation occurs; and the amount of any early cancellation fee;
 - (m) A statement describing Contract renewal procedures, if any;
 - (n) A dispute resolution procedure;
 - (o) The Commission's telephone number and Internet address; and
 - (p) The Office of the People's Counsel's telephone number and Internet address.
- 327.9 Telephone Solicitations shall be made only between the hours of 9 a.m. and 9 p.m.
- 327.10 The party making the telephone Solicitation must begin the conversation by stating the following:
- (a) His or her name;
 - (b) The name of the business or organization calling;
 - (c) The nature of the call, i.e., a Solicitation;
 - (d) A brief description of the subject-matter being solicited; and

- (e) An offer to the Customer to hear the full Solicitation.

327.11 Home Solicitations shall be limited to the hours between 9 a.m. and sunset. The soliciting party must produce a picture identification badge and begin the conversation by stating the following:

The name of the business or organization;

- (a) The nature of the visit, i.e., a Solicitation;
- (b) A brief description of the subject matter being solicited;
- (c) Ask the Customer if he/she would like to hear the full Solicitation; and
- (d) The soliciting Energy Supplier must include a statement under the conspicuous Caption: "BUYER'S RIGHT TO CANCEL" which states: "If this agreement was solicited at or near your residence, and you do not want the goods and services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight on the third business Day after you signed this agreement. This notice must be mailed to: (name and address of seller). If you cancel, the seller may not keep any of your cash down payments."

327.12 If an Energy Supplier receives a request from a Customer not to receive Solicitations from that solicitor, the Customer shall no longer be contacted in the manner in which the Customer indicates including but not limited to, in-person Solicitation, telephone Solicitation, electronic Solicitation or any form of mail or post card by the solicitor.

327.13 Nothing in these regulations will affect the applicability of any Federal or District telephone Solicitation and consumer protection laws and regulations including, but not limited to, the fines and penalties thereunder for violation of such laws and regulations.

327.14 There are three (3) principal forms by which a Customer may enter into a Contract with an Energy Supplier:

- (a) Over the telephone;
- (b) Internet and other technological means; and
- (c) A written Contract.

- 327.15 An Energy Supplier may not use “negative option contracts,” in which Contracts are created if the customer takes no action. Therefore, an Energy Supplier may not enter into a Contract with a Customer if the Customer simply refrains from action.
- 327.16 If a Customer wishes to enter into a Contract with an Energy Supplier, the Energy Supplier may request from the Customer the following information, by telephone, in writing, or Internet or other technological means:
- (a) The customer’s name;
 - (b) Billing address;
 - (c) Service address;
 - (d) Electronic mail address;
 - (e) Telephone number;
 - (f) Utility Account number;
 - (g) Employment information; and
 - (h) Usage information.
- 327.17 An Energy Supplier may ask for additional information beyond that specified in section 327.16 only after first informing the Customer of his or her right not to provide such information.
- 327.18 An Energy Supplier must advise a Customer that he/she has the right to rescind the Contract agreement within a 3-day period.
- 327.19 For the purpose of verifying a residential Customer’s intent to Contract with an Energy Supplier by telephone, an Energy Supplier must implement either:
- (a) An Independent Third-Party telephone verification system; or
 - (b) An electronic recording system that maintains the entire recording with the Customer for the duration of the Contract.
- 327.20 If an Energy Supplier elects to implement an independent third-party verification system, then the Independent Third-Party Verifier shall be required to ask the Customer the following questions:

- (a) “Are you the Customer of record?”
- (b) “Did you agree to switch your natural gas supply service or electric supply service to [New Supplier]?” and
- (c) “Is [Customer’s address] your correct address?” or “Is [Customer’s Utility Account number] your correct Utility Account number?”

327.21 An Energy Supplier may not transmit an Enrollment transaction to a Natural Gas or Electric Utility unless and until the Energy Supplier obtains either a positive third-party verification of the Customer’s intent to Contract or electronically records the entire conversation with the Customer on which the Contract is based.

327.22 Once a positive verification has been obtained or an electronic recording has been made, the Energy Supplier will transmit the Enrollment transaction to the Natural Gas or the Electric Utility, whichever is appropriate.

327.23 Once the Customer’s Contract choice is verified by an Independent Third-Party Verifier or an electronic recording is made, the Energy Supplier must within five (5) Business Days from the Day the Customer agreed telephonically to Contract with the Energy Supplier, provide to the Customer a complete written Contract, via U.S. mail or electronic mail.

327.24 In the event of a dispute over the existence of a Contract, the Energy Supplier shall bear the burden of proving the Contract’s existence.

327.25 A written Contract requires a written signature of the Customer.

327.26 The Energy Supplier may post on its web site an electronic version of the solicitation for the supply of natural gas or electricity. The electronic solicitation must include:

- (a) An electronic application form to enter into a contract for the supply of natural gas or electricity;
- (b) An electronic version of the actual contract; and
- (c) A link to the Commission’s web site to obtain the applicable rules and regulations governing the relationship between the Customer and the Energy Supplier.

- 327.27 The Energy Supplier must advise the Customer of the right to rescind the contract agreement within a 3-day period. This information shall be prominently displayed on the website.
- 327.28 The electronic submission of the application to Contract with the Energy Supplier constitutes a valid and binding “electronic signature.”
- 327.29 If the Customer executes an electronic Contract, the Energy Supplier must acknowledge the Customer’s submission with a Confirmation of receipt of application within twenty-four (24) hours of receipt.
- 327.30 All Enrollments via the Internet shall be initiated by the Customer. It is the responsibility of the Energy Supplier to provide its website address to the Utility and the Utility shall include such link on its website. The Energy Supplier shall include a website link of the Natural Gas Utility or Electric Utility on its website.
- 327.31 For electronic contracting, the Energy Supplier’s website must be configured to prompt the Customer to print or save the Contract.
- 327.32 During the Enrollment procedure, each web screen must clearly display a “Cancel” icon enabling the Customer to terminate the Enrollment transaction at any time. In addition, this feature must be explained to the Customer at the beginning of the Enrollment process.
- 327.33 At the completion of the enrollment and verification process, and at the end of the 3-day rescission period, the Energy Supplier at the Customer’s request must provide a secure location on its website or a designated website where the Customer can verify that he or she has been enrolled in the Energy Supplier’s program.
- 327.34 All electronic transactions and communications via the Internet between the Customer and the Energy Supplier shall be protected in such a manner as to ensure privacy of the Customer’s information.
- 327.35 The Electric Utility shall accept the last Enrollment submitted by an Energy Supplier.
- 327.36 By the ninth (9th) calendar Day of the month (or next Business Day, if the ninth day falls on a holiday or weekend), each Energy Supplier shall provide to the Natural Gas Utility a list of Customers to be supplied by that Energy Supplier beginning with the Customer’s Meter read date the following month.
- 327.37 Once the Natural Gas Utility processes a Customer Enrollment from an Energy Supplier, the Natural Gas Utility shall not accept Enrollments from

any other Energy Supplier for that Customer until Termination of Contract.

- 327.38 If a Customer chooses to cancel his/her Contract, prior to the expiration of the Contract, that Customer must contact the Energy Supplier to make such a request, and the Energy Supplier shall process the Customer's cancellation request to meet the Natural Gas Utility's next available cancellation cycle and for electric service within two (2) Business Days after receipt of the cancellation request.
- 327.39 Confirmation of a Customer's intent to enroll with an electric supplier and the expiration of the 3-day Rescission Period must occur prior to the transmittal of an EDI enrollment transaction by the electric supplier to the electric Utility.
- 327.40 Confirmation of a Customer's intent to enroll with a natural gas supplier and the expiration of the 3-day Rescission Period must occur prior to the transmittal of an enrollment transaction by the gas supplier to the gas Utility.
- 327.41 Upon an Energy Supplier's Enrollment of a Customer with the Utility, the Energy Supplier must provide to the Customer, within a reasonable period of time the following:
- (a) A statement of enrollment;
 - (b) A description of the agreed-upon billing option and the billing date if different from the Company's usual billing date; and
 - (c) Customer service information (including toll-free telephone number, mailing address, and dispute resolution process information).
- 327.42 If the Customer does not respond to the Rescission Notice within the 3-Day Rescission Period, the enrollment will be considered effective. The customer must notify the Energy Supplier, not the utility, of his or her intent to rescind the Contract.
- 327.43 After the 3-Day Rescission Period expires and the enrollment is processed by the electric Utility, the relationship between the Customer and the electric supplier will be governed by the terms and conditions contained in the contract.
- 327.44 The 3-Day Rescission Period begins on one of the following dates;

- (a) When the Customer signs the contract;
- (b) When the Customer transmits the electronic acceptance via the Internet; or
- (c) When the Contract is mailed by the supplier the Rescission Period begins when the mail is postmarked.

327.45 An Energy Supplier shall provide the Customer with a notice at least thirty-five (35) Days before expiration or termination of a Contract. The Energy Supplier's expiration or termination notice shall include the following:

- (a) Final Bill payment instructions;
- (b) A statement informing the Customer that unless the Customer selects a new Energy Supplier, Termination of Contract shall return the Customer to the Utility; and
- (c) The Commission's telephone number and Internet address.

327.46 If an Energy Supplier's contract provides for automatic renewal of the contract:

- (a) The Energy Supplier shall provide notice of the pending renewal of the Contract at least forty-five (45) Days before the renewal is scheduled to occur;
- (b) Notice of any changes to the material terms and conditions (including billing option, Billing Cycle), must be provided within the forty-five (45) Day notice. The notification of renewal or of any change must be highlighted and clearly stated; and
- (c) The forty-five (45) Day notice must inform the Customer how to terminate the Contract without penalty and advise the Customer that terminating the Evergreen Contract without selecting another Energy Supplier will return the Customer to Natural Gas Sales Service or electric Standard Offer Service. The notice must also inform the Customer that the Commission can provide the Customer with additional information on the energy supply choices available to the Customer. The telephone number and website for the Commission shall be included in the notice.

327.47 At least 24 hours prior to any change, an Energy Supplier shall provide to the Commission current information regarding changes in its rates charges and services provided.

- 327.48 An Energy Supplier shall post on its website information about its services and rates for Customers that is current and understandable.
- 327.49 An Energy Supplier shall not conduct Meter readings.
- 327.50 To the extent that an Energy Supplier's charges are based on usage, an Energy Supplier shall rely on the Meter reading (actual, estimated, or customer meter readings) provided to it by the respective Utility.
- 327.51 An Energy Supplier may, at the election of a Customer, Bill a Customer in accordance with a level payment billing program. If an Energy Supplier utilizes the billing services of a Utility, an Energy Supplier may use the level payment plan as part of the Utility's billing service. The Energy Supplier shall inform the Customer of this option and explain how the monthly payments are calculated. Prior to implementation of the plan, the Energy Supplier shall provide the Customer with the following information in writing:
- (a) An acknowledgement that the Customer will be on the plan effective the next billing period;
 - (b) An estimate of the Customer's use on an annual basis and an explanation of how the monthly payment has been calculated;
 - (c) An indication that the final bill for the plan effective period will reflect the last level payment installment adjusted for any difference between actual and budgeted usage. Amounts overpaid shall be credited to the customer's account or refunded, if requested by the Customer. Amounts underpaid that are equal to or greater than the month payment may be paid in up to three (3) monthly installments; and
 - (d) Final bills are issued when either a Customer account is closed or in the case of Customers with third-party suppliers, the supply contract is closed or changed. Any budget plan in effect will be reconciled upon rendering the final Bill. Amounts underpaid will be due within 20 days of final bill rendering. Amounts overpaid may be refunded or credited to the Customer's utility account within 20 days of final bill rendering.
- 327.52 The Energy Supplier may perform a periodic analysis of a Customer's level payment billing plan and notify the Customer, within twenty-one (21) Days thereafter, if actual usage varies significantly from that upon which the plan was based and give the Customer an opportunity for revision of the plan. If an Energy Supplier utilizes the billing services of a

Utility, the Customer may have an opportunity for revision of the level payment plan at the same time as the Utility allows under the Utility's level payment plan procedures or at a time designated by the Energy Supplier.

327.53 If the Customer enters into a DPA with the Utility pursuant to §306, and the Energy Supplier utilizes the billing services of the Utility, the Utility may include the Energy Supplier's balance as part of its DPA.

327.54 Any Energy Supplier that violates this section may be subject to Sanctions including license revocation upon notice given by the Commission.

328 CUSTOMER PROTECTION STANDARDS APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

328.1 The purpose of the Telecommunications Service Provider Consumer Protection Standards is to establish uniform standards for billing, security deposits, Disconnections and reconnections of service, resolution of complaints, enrollment procedures, advertising, termination of contracts, and switching of service of Telecommunications Service Providers.

328.2 This section applies to service provided to residential Customers by Telecommunications Service Providers who have received certification to provide local telecommunications services.

328.3 A Telecommunications Service Provider may not engage in a marketing, advertising, Solicitation or trade practice that is unlawful, misleading, or deceptive as set forth in D. C. Code §28-3904.

328.4 A Telecommunications Service Provider shall not engage in Cramming.

328.5 A Telecommunications Service Provider shall not engage in Slamming.

328.6 Any prohibition regarding the disclosure of Account status and Customer information should not preclude Telecommunications Service Providers from obtaining or providing Account status and Customer information for acquisition or sale of a book of business as long as the review of such information during a proposed acquisition or sale is subject to confidentiality agreements.

328.7 Telecommunications Service Providers must follow the Federal Communications Commission rules regarding Customer Proprietary Network Information.

328.8 Advertising of Telecommunications Service Providers shall be neither false nor misleading.

328.9 Information contained in a Telecommunications Service Provider's advertising must be clear, accurate and supportable. In addition, any advertisement that contains any specific statement, claim, comparison or assertion regarding rates, that could reasonably be construed as an attempt to persuade consumers that the a Telecommunications Service Provider's rate offering is better than the comparable rate offering of the incumbent local exchange carrier's or another Telecommunications Service Provider's offering must include:

- (a) The rate for service offered, including a disclosure that the rate excludes local and federal taxes, fees and charges and that the total Bill will include such charges in addition to Telecommunications service charges. If the rate for service offered is not available because it is part of a bundled package, then the disclosure shall be in accordance with § 328.10(b) *infra.*;
- (b) Any taxes, fees and charges, other than for Telecommunications service to be provided, which will automatically be charged to consumers who contract for the advertised service; and
- (c) Any minimum contract duration necessary to obtain an advertised rate.

328.10 Any print Solicitation must contain all material terms and conditions, including, but not limited to, any of the following, if any is a material term or condition:

- (a) Telecommunications Service Provider's name, address, Customer contact, telephone number, and website address (if applicable);
- (b) Itemization of services provided;
- (c) Price of service;
- (d) Description of proposed Contract items;
- (e) Duration of the agreement (including initial time period, rollover provisions with mandatory notice, and early cancellation penalties);
- (f) Notice that there may be a Deposit required, including the amount of the Deposit, return procedures, use of and protection for such Deposits;

- (g) All applicable fees and charges and the circumstances under which the Customers will incur them;
 - (h) Notice concerning early termination by the provider and the options open to the Customer if termination occurs; and
 - (i) Notice concerning early termination by the Customer and the options open to the Customer if termination occurs.
- 328.11 If the Telecommunications Service Provider is providing Bundled Service and does not break out the individual rates for services in its Solicitation, a disclaimer must accompany the Solicitation.
- 328.12 Telephone Solicitations shall be limited to the hours between 8 a.m. and 9 p.m. and comply with applicable Federal "Do Not Call" rules. Should a conflict between this section and the Federal rules exist, the Federal rules shall apply.
- 328.13 The party making the telephone Solicitation must begin the conversation by stating the following:
- (a) The name of the business or organization calling;
 - (b) The nature of the call, i.e., a solicitation; and
 - (c) A brief description of the subject matter being solicited.
- 328.14 Home Solicitations shall be limited between the hours of 8 a.m. and sunset. The soliciting party must produce a picture identification badge and begin the conversation by stating or asking the following:
- (a) The name of the business or organization;
 - (b) The nature of the visit, i.e., a solicitation;
 - (c) A brief description of the subject matter being solicited; and
 - (d) If the Customer would like to hear the full Solicitation.
- 328.15 In any Contract solicited at a Customer's home, the soliciting Telecommunications Service Provider must include a statement under the Conspicuous Caption: "BUYER'S RIGHT TO CANCEL" which states: If this agreement was solicited at or near your residence, and you do not want the goods and services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight on the third Business Day

after you signed this agreement. This notice must be mailed to: (name and address of seller). If you cancel, the seller may not keep any of your cash down payments.

- 328.16 Each Telecommunications Service Provider must comply with all federal "Do Not Call" rules and maintain its own "Do Not Call" List. If a Telecommunications Service Provider receives a request from a Customer not to receive Solicitations from that solicitor, the Customer's name must appear on the list and the Customer shall no longer be contacted by the solicitor.
- 328.17 Any Telecommunications Service Provider that violates this section is subject to having its certification revoked by the Commission, after due process.
- 328.18 Nothing in these regulations will affect the applicability of any Federal or District telephone Solicitation and consumer protection law and regulations, including but not limited to, the fines and penalties there under for violation of such laws and regulations.
- 328.19 A Customer may not enter into a new Contract with a Telecommunications Service Provider by refraining from action except when complying with Federal rules governing Customer Proprietary Network Information.
- 328.20 If a Customer wishes to enter into a Contract with a Telecommunications Service Provider, the Telecommunications Service Provider may request, by telephone, in writing, or by Internet or other technological means, information including, but not limited to the following:
- (a) The customer's name;
 - (b) The customer's billing address;
 - (c) The customer's service address;
 - (d) The customer's electronic mail address;
 - (e) The customer's telephone number;
 - (f) The customer's employment information; and
 - (g) The name of a third party responsible for the Bill.

- 328.21 The Telecommunications Service Provider may ask for additional information only after first informing the customer of his or her right not to provide such information.
- 328.22 If a contract is entered into electronically, the following conditions must be met:
- (a) The Telecommunications Service Provider shall post on its web site an electronic version of the solicitation for the Telecommunications service. The electronic solicitation must include:
 - (1) An electronic application form to enter into a Contract for Telecommunications service,
 - (2) An electronic version of the actual Contract, and
 - (3) An electronic version of any applicable rules and regulations governing the relationship between the customer and the Telecommunications service provider.
 - (b) The electronic submission of the application to Contract with the Telecommunications Service Provider shall constitute a valid and binding “electronic signature.”
 - (c) The Telecommunications Service Provider must acknowledge the Customer’s submission of the application to Contract with a confirmation of receipt of application within twenty-four (24) hours of receipt.
 - (d) The Telecommunications Service Provider is not required to furnish a hard copy of the Contract or of any and all applicable rules and regulations if the same are posted in full and are available for download from the website of the Telecommunications Service Provider.
 - (e) The Telecommunications Service Provider’s website must be configured to prompt the Customer to print or save the terms and conditions to which the Customer agrees.
 - (f) At the completion of the Enrollment process, the Telecommunications Service Provider’s website must display that the Customer has agreed to receive service from the Telecommunications Service Provider.

- (g) All electronic transactions and communications via the Internet between the Customer and the Telecommunications Service Provider shall be protected in such a manner as to ensure privacy of the Customer's information.
- 328.23 If applicable, a written Contract requires a written signature of the Customer.
- 328.24 In the event of a dispute over the existence of a Contract, the Telecommunications Service Provider shall bear the burden of proving the Contract's existence.
- 328.25 Upon initiation of service, the Telecommunications Service Provider shall send, within a reasonable period of time, to the Customer:
- (a) A statement of enrollment;
 - (b) A description of the agreed-upon type of service; and
 - (c) Customer service information (including a local or toll-free telephone number).
- 328.26 A Telecommunications Service Provider shall post on the Internet information about its services and rates for Customers that is current and understandable.
- 328.27 Upon request by the Commission, a Telecommunications Service Provider may be required to provide information regarding a Customer's request for its service. If such information is not provided, that Telecommunications Service Provider may be subject to Sanctions as determined by the Commission.
- 328.28 A Telecommunications Service Provider shall not be obligated to provide service to an applicant who owes the Telecommunications Service Provider money for Telecommunications service provided to a prior account in his or her name, unless:
- (a) The applicant makes full payment for such service provided to any such prior account in his or her name;
 - (b) The Telecommunications Service Provider agrees to accept payments under a Deferred Payment Agreement of any amount due for Telecommunications service to a prior Account in the Applicant's name;

- (c) The applicant has pending a billing dispute pursuant to § 320 of these rules with respect to any amounts due for service to a prior account in his or her name and has paid any amounts required to be paid pursuant to those provisions; or
 - (d) The Commission directs the Telecommunications Service Provider to provide services to a Customer.
- 328.29 The Telecommunications Service Provider may request a Deposit, guarantee or other payment option, but not both, as a condition of service.
- 328.30 An oral application for service shall be deemed completed when an applicant who meets the requirements of subsection 328.29 provides his or her name, address, and address of prior account or prior telephone number, if any. A Telecommunications service provider may establish non-discriminatory procedures to require an applicant to provide reasonable proof of the applicant's identity.
- 328.31 An application for service not approved within three (3) Business Days may be deemed denied.
- 328.32 No Telecommunications Service Provider shall deny an application for service or condition service upon Deposit, guarantee or other payment option without advising the Applicant verbally or in writing within three (3) Business Days of receipt of the application for service of:
- (a) The reason or reasons for the denial, or the requirement for a Deposit, guarantee, or other payment option;
 - (b) Precisely what the Applicant must do to qualify for service or satisfy the requirement; and
 - (c) His or her right to an investigation and review by the Commission of the denial or request for a Deposit, guarantee, or other payment option. The Telecommunications Service Provider shall advise the Applicant of the appropriate methods available to challenge the action of the Telecommunications Service Provider and the address and telephone number of the Commission and the Office of the People's Counsel.
- 328.33 A Telecommunications Service Provider may not refuse service to a present or prospective Customer based upon the following grounds:
- (a) Failure of a prior customer to pay for service at the premises to be serviced;

- (b) Failure to pay for a different class of service or to a different entity; or
- (c) Failure to pay directory advertising charges;

However, a Telecommunications Service Provider may refuse to provide services to a present or prospective Customer who has failed to pay an outstanding balance due the company for residential services incurred by the applicant or present Customer unless the applicant or present Customer consents to sign an agreement to pay the outstanding bill for such services or charges.

328.34 No Telecommunications Service Provider shall require any Applicant or existing residential Customer to post a Deposit, guarantee or be subjected to a credit limit or a direct debit payment option as a condition of receiving Telecommunications services unless the existing Customer or Applicant:

- (a) Has an Account that has been delinquent in excess of sixty (60) days within the previous twelve (12) months; or
- (b) Has had Telecommunications services terminated for non-payment during the preceding six (6) months or has an outstanding balance on a previous District of Columbia residential Account; or
- (c) Does not give a Telecommunications Service Provider with which he or she is applying for service permission to determine the existence of delinquent Charges; or
- (d) Fails to provide reasonable proof of identity.

328.35 If a Telecommunications Service Provider requires a deposit from an existing residential customer or an Applicant for telephone service, it shall permit such customer to pay the Deposit in installments over a period not to exceed six (6) months.

328.36 In any case where Customer Deposits are authorized by this section, the Deposit amount shall not exceed two times the average monthly bill for Telecommunications services for a calendar year in order to secure payment for Telecommunications services actually rendered or for the rental of equipment, instruments and facilities actually supplied.

328.37 Each Telecommunications Service Provider shall be liable for interest on Deposits held from the date the Deposit is made until the date the Deposit has been refunded or until an effort has been made to refund the Deposit. Each Telecommunications Service Provider shall pay simple interest on Deposits with the rate being established not later than January 15th of each

year, equal to the average annual yields of one year Treasury bills for September, October, and November of the preceding year.

- 328.38 Each Telecommunications Service Provider holding Customer Deposits shall send a statement to each Customer when the Deposit is applied to an unpaid Bill or Bills which shows the following:
- (a) The amount of the Deposit, together with the interest accrued thereon and the period covered thereby; and
 - (b) The balance of the Bill or Bills remaining to the credit of the Customer.
- 328.39 Upon Disconnection of service, the deposit and any accrued interest shall be credited to any outstanding final Bill and any remaining balance shall be returned to the customer.
- 328.40 A Deposit and accrued interest shall be refunded promptly or applied as a credit to the Customer's account by the Telecommunications Service Provider upon satisfactory payment by the Customer of all proper Charges for Telecommunications service for twelve (12) consecutive months. The Telecommunications Service Provider may withhold return of Deposit funds pending resolution of any dispute.
- 328.41 A Telecommunications Service Provider shall maintain a record of all Deposits, showing the Customer's name and address or other identifying data, the amount of the Deposit, the date it was paid, and the interest earned and paid thereon.
- 328.42 Each customer posting a Deposit shall promptly receive a confirmation containing, at a minimum the following information:
- (a) The Customer's name;
 - (b) The amount of payment; and
 - (c) Statement of the terms and conditions applicable to Deposits.
- 328.43 A Telecommunications Service Provider may suspend or disconnect Telecommunications service, if the Customer:
- (a) Fails to pay the Telecommunications service provider charges due at any time during the preceding six (6) months, provided, however, that suspension or Disconnection of service for Bills due for service rendered during periods in excess of the six (6) month

period is permitted in cases involving billing disputes during the six (6) month period;

- (b) Fails to pay amounts due under a DPA;
- (c) Fails to pay or agree in writing to pay equipment installation charges relating to the initiation service;
- (d) Fails to pay a lawfully required Deposit or provide a guarantee;
- (e) Is in bankruptcy, receivership, has abandon service, or abnormal high usage not covered adequately by a security deposit less than five (5) days notice may be given if necessary to protect the Telecommunications Service Provider's revenues;
- (f) Fails to keep a prior promise to pay bankruptcy, receivership, abandoned service, or abnormal high usage is involved, a Telecommunications service provider may not deny services on the day preceding any day on which it is not prepared to accept payment of the amount due; or
- (g) Fails to comply with municipal regulations or other laws pertaining to Telecommunications service.

328.44

A notice of suspension or Disconnection may either be sent along with the Bill or such notice must be on the first page of the Bill and shall be in such bold print as to be conspicuous to a reasonable Person. A notice of suspension or Disconnection shall clearly state or include:

- (a) The earliest date on which suspension or disconnection may occur;
- (b) The reasons for suspension or disconnection and the manner in which suspension or disconnection may be avoided including the total amount required to be paid to avoid suspension or disconnection;
- (c) The address and telephone number of the office of the Telecommunications Service Provider that the Customer may contact in reference to his or her account;
- (d) The availability of the procedures for handling Complaints;
- (e) The availability and a general description of a DPA, which shall be capitalized and in bold print; and
- (f) Additional information consistent with this Chapter.

- 328.45 A Telecommunications Service Provider shall not Disconnect Residential Service unless a Disconnection or suspension notice has been sent to the Customer at the billing address by either first class mail or other technological means at least fifteen (15) Days prior to the date of proposed Disconnection. The Telecommunications Service Provider shall not suspend Residential Service unless a suspension notice has been sent to the Customer at the billing address by either first class mail or other technological means at least ten (10) Days prior to the date of proposed suspension. Any notice required to be sent to a Customer prior to Disconnection or suspension of service may be sent along with the Bill for service; however, the notice of Disconnection or suspension of service must be on the first page of the Bill and shall be in bold print. When the Customer has requested, a duplicate copy of the notice shall be sent by either first class mail or Internet or other technological means to a designated third party. The third party assumes no obligation for the Customer's Account.
- 328.46 A Telecommunications Service Provider may not issue or send a notice of suspension or Disconnection unless at least twenty-five (25) Days have elapsed from the Bill date. When exceptional circumstances exist, a notice may be issued in less than twenty-five (25) Days, but only in accordance with procedures approved by the Commission.
- 328.47 The Telecommunications Service Provider shall make, at minimum, two (2) attempts to contact the Customer by telephone, in writing, in Person or other technological means, to advise of the pending action and what steps must be taken to avoid Disconnection. At least two (2) Days before the date set for Disconnection of service, a Telecommunications Service Provider shall make reasonable efforts to contact the Customer, by telephone, in person or other technological means, to advise of the pending action and what steps must be taken to avoid Disconnection.
- 328.48 A Telecommunications Service Provider shall not disconnect service for the period after 5:00 p.m. Thursday and before 8:00 a.m. Monday, provided such Day or the following Day is not a public holiday or a Day on which the main business office of the Telecommunications Service Provider is closed for business.
- 328.49 Subsection 328.48 shall not apply to service Disconnection to abandoned buildings, where the Customer has requested Disconnection in circumstances of unsafe conditions, or to Disconnection of Telecommunications services where there is evidence of toll abuse or fraud.

- 328.50 No Telecommunications Service Provider shall suspend or disconnect service on the grounds that a customer's facilities have been abandoned or are being used by unauthorized persons unless such Telecommunications Service Provider shall first determine by such means as are reasonably calculated to determine occupancy, that such facilities have in fact been abandoned or are being used without the authority of the customer of record. The Telecommunications Service Provider shall send notice to the customer stating the reasons for the suspension or Disconnection, except that the five (5) days notification period shall be waived when mailings are returned by the post office or a new Customer advises that he or she moved into the location.
- 328.51 No Telecommunications Service Provider shall suspend or disconnect service for non-payment of bills rendered unless:
- (a) It has verified that payment has not been received at any office of the Telecommunications Service Provider or at any office of an authorized collection agent through the end of the notice period required by this chapter; and
 - (b) It shall have verified on the day suspension or Disconnection occurs that payment has not been posted to the customer's account as of the opening of business on that day.
- 328.52 Each Telecommunications Service Provider shall ensure that any payments made in response to a notice of suspension or Disconnection, when the customer brings to the attention of the Telecommunications Service Provider or its collection agents that such a notice has been issued, are:
- (a) Posted to the Customer's account on the day payment is received; or
 - (b) Processed in a manner such that suspension or Disconnection will not occur.
- 328.53 Service shall not be used for any purposes in violation of law or for any use as to which the Customer has not obtained all required governmental approvals, authorizations, licenses, consents, and permits.
- 328.54 Service shall not be used in any manner that interferes with other Persons in the use of their service, prevents other Persons from using their service, or otherwise impairs the quality of service to other Customers. The Telecommunications Service Provider may require a Customer to immediately shut down its transmission of signals if said transmission is causing interference to others or impairing the service of others.

328.55 A Telecommunications Service Provider shall reconnect service within twenty-four (24) hours of cure of the cause for suspension or Disconnection upon:

- (a) Receipt by the Telecommunications Service Provider of full amount of arrears for which service was suspended or Disconnected or upon the elimination of conditions that warranted suspension or termination of service; or
- (b) Agreement by the Telecommunications Service Provider and the Customer on a Deferred Payment Agreement and the remittance of a down payment, if required under the plan.

328.56 Whenever circumstances beyond the Telecommunications Service Provider's control prevent reconnection of service within twenty-four (24) hours of any of the events specified in § 328.55, service shall be reconnected by the Telecommunications Service Provider or Utility with ownership or control of the facilities causing the service interruption within four (4) hours after those circumstances cease to exist.

328.57 In the event of a dispute between a Customer and a Telecommunications Service Provider regarding any matter contained in § 328 of these regulations, such dispute shall be resolved pursuant to the provisions of §§ 323, 324, 325 or 326 of these regulations.

329 – 397 [RESERVED]

398 WAIVER

398.1 The Commission may, upon request with good cause shown, or on its own, waive any provisions of Chapter 3 of this title.

399 DEFINITIONS

399.1 When used in this chapter, the following terms and phrases shall have the meaning ascribed:

Account: a record capturing information related to the service(s) provided to a Customer or at a premise by a Utility, Energy Supplier or Telecommunications Service Provider or third party biller on behalf of a Utility, Energy Supplier or Telecommunications Service Provider.

Aggregator: a person who acts on behalf of customers to purchase gas or electricity. To “act on behalf of customers” means that a person acts with the express authorization of customers to purchase gas or electricity on

those customers' behalf and receives direct or indirect compensation or benefit in any form from any entity.

Applicant: Person who requests natural gas, electric or Telecommunications services at premises to be used as his or her residence or the residence of a third party on whose behalf the Person is requesting service.

Bill: a statement from the Utility, Energy Supplier, or Telecommunications Service Provider, stating the Charges for the services rendered to the Customer or premises.

Billing Cycle: the service period of twenty-six (26) to thirty-five (35) Days.

Broker: a person who acts as an agent or intermediary in the sale and purchase of natural gas or electricity but who does not take title to natural gas or electricity.

Bundled Service: package of multiple services offered at a single price.

Business Day: a Day in which normal business is transacted, excluding Saturdays, Sundays, and Federal and District of Columbia holidays.

Charge: the price of a service or commodity to a Customer or premise.

Commission: the Public Service Commission of the District of Columbia.

Complaint: any contact by a Customer or his or her Designated Representative with the Commission in which the Customer or Designated Representative registers dissatisfaction with the Utility, Energy Supplier, or Telecommunications Service Provider's service.

Complainant: a Customer or Customer's Designated Representative who files a Complaint.

Consolidator: any owner of or property manager for multi-family residential, commercial office, industrial, and retail facilities who combines more than one property for the primary purpose of contracting with an Aggregator or energy supplier for gas or electric energy services for those properties and who: (A) does not take title to natural gas or electric energy; (B) does not sell natural gas or electric energy to buildings not owned or managed by such owner or property manager; (C) does not offer aggregation of natural gas or electric energy services to other, unrelated end-users; and (D) arranges for the purchase of natural gas or

electric energy services only from duly licensed energy suppliers or Aggregators.

Consolidated Bill: an arrangement whereby a Customer receives a single Bill from a Utility.

Confirmation: (A) Confirmation of a telephone application for Enrollment of a residential Customer refers to action taken by a competitive Energy Supplier wherein an Independent Third Party Verifier must confirm the residential Customer's decision to switch from an Energy Supplier. (B) Confirmation of an electronic application for Enrollment occurs when the Energy Supplier sends an electronic response to the Customer confirming that the application for Enrollment was intended and received. (C) There is no confirmation process applicable to written applications for Enrollment.

Contract: an agreement between a Customer and an Energy Supplier or Telecommunications Service Provider that specifies the terms, conditions, and Charges for the provision of electric, natural gas or Telecommunications services to the Customer.

Cramming (for Telecommunications Service Providers): the practice of causing unauthorized, misleading or deceptive Charges to be placed to a Customer's existing Telecommunications service Account option(s).

Cramming (for Energy Suppliers): the practice of adding services or Charges to a Customer's existing retail energy service options absent the express consent of the Customer.

Customer: an accountholder or purchaser of electric, natural gas or Telecommunications services for residential use in the District of Columbia, excluding master-metered apartments with four or more units. An Account holder is a person in whose name an account with a Utility, Energy Supplier, or Telecommunications Service Provider has been established.

Day: a calendar day unless otherwise specified.

Deferred Payment Agreement (DPA): an agreement whereby a Customer pays a past due balance on an installment basis.

Deposit: any payment made by a Customer to a Utility, Energy Supplier or Telecommunications Service Provider in order to secure the Utility, Energy Supplier or Telecommunications Service Provider against potential Customer nonpayment or default.

Designated Representative: a Person for whom the Customer of record has submitted a notarized letter with the Office of Consumer Services authorizing the representative to act on his or her behalf.

Disconnection: an action by a Utility or Telecommunications Service Provider to prevent the delivery of energy or Telecommunications services. For Telecommunications services, this shall also include the suspension of services.

Distribution Service Charge: a Charge levied by the Electric or Natural Gas Utility to deliver energy supply to the Customer.

EDI Transaction: Electronic Data Interchange.

Electric Utility: the company that provides electric distribution service and is regulated by the Public Service Commission of the District of Columbia.

Energy Supplier: a person, including an Aggregator, Broker, or Marketer, who generates or produces natural gas or electricity, sells natural gas or electricity, or purchases, brokers, arranges, or markets natural gas or electricity for sale to customers. The term excludes the following: (A) building owners, lessees, or managers who manage the internal distribution system serving such building and who supply natural gas or electricity solely to occupants of the building for use by the occupants; (B)(i) any person who purchases natural gas or electricity for its own use or for the use of its subsidiaries or affiliates; or (ii) any apartment building or office building manager who aggregates natural gas or electric service requirements for his or her building(s), and who does not: (I) take title to natural gas or electricity; (II) market natural gas or electric services to the individually-metered tenants of his or her building; or (III) engage in the resale of natural gas or electric services to others; (C) property owners who supply small amounts of power, at cost as an accommodation to lessors or licensees or the property; and (D) a Consolidator.

Enrollment: the process in which the Natural Gas or Electric Company receives and processes the notification from the energy supplier that a customer has entered into a contract for the supply of natural gas or electricity.

Estimated Bill: a Bill for natural gas or electric service which is not based on an actual meter reading by the Utility or Customer.

Evergreen Contract: a Contract that is capable of automatic renewal without any action by the Customer.

Formal Complaint: a written Complaint filed with the Commission.

Generation Service Charge: a Charge levied by the Energy Supplier or Utility for the provision of electricity supply to the Customer.

Independent Third-Party Verifier: a Person retained by individual Energy Suppliers to confirm the Customer's decision to enter into a Contract for the supply of natural gas or electricity.

Informal Complaint: a Complaint filed by a Customer with the Commission's Office of Consumer Services requesting mediation of a dispute after the Customer has failed to resolve the dispute directly with the Utility, Energy Supplier, or Telecommunications Service Provider.

Marketer: a person who purchases and takes title to natural gas or electricity as an intermediary for sale to Customers.

Meter: instrument that measures or records the amount of energy service delivered to the customer.

Natural Gas Sales Service: services governed under WG's Rate Schedule No. 1., with Sales Service, whereby the Customer receives natural gas supply from the Washington Gas Light Company. Sales Service is also available as a default to Customers who Contract for natural gas with an Energy Supplier but who fail to receive delivery of natural gas under such Contracts and to Customers who do not choose an Energy Supplier.

Natural Gas Utility: the company that provides Sales Service and delivery of distribution service and is regulated by the Public Service Commission of the District of Columbia.

Office of Consumer Services: an office of the Commission designated to perform responsibilities in accordance with this chapter.

OPC: the Office of the People's Counsel of the District of Columbia.

Person: every individual, corporation, company, association, joint-stock company, firm, partnership, or other entity.

Purchased Gas Charge (PGC): the provision in a Natural Gas Utility's rate schedule which permits the adjustment of the amount of the Bill as the cost of gas varies from a specified base amount per unit.

Rescission Notice: written correspondence issued to the Customer via U.S. Mail notifying the Customer of the right to cancel.

Rescission Period: the time period within which a Customer may choose to cancel a Contract for natural gas or electric service with an energy supplier.

Residential Service: natural gas or electric service to a separately metered household, and including natural gas service to not more than three dwelling units served by a single Meter in a multiple-family dwelling, or portion thereof; telephone service to an individual, family or group for non-business purposes.

Sanctions: The following Sanctions may be imposed by the Commission:

- (a) **Civil Penalties:** The Commission may impose a civil penalty of not more than \$10,000 for each violation. Each Day a violation continues shall be considered a separate violation for purposes of this penalty. The commission shall determine the amount of a civil penalty after considering the following: the number of previous violations of any provisions of Commission law or regulations; the gravity and duration of the current violations; and the good faith efforts of the Licensee or Person charged in attempting to achieve compliance after the Commission provides notice of the violation;
- (b) **Customer Refund or Credit:** The Commission may order a Licensee to issue a refund or credit to a Customer;
- (c) **Cease and Desist Order:** The Commission may order the Licensee to cease adding or soliciting additional Customers; cease serving Customers in the District of Columbia; and cease any action found to be in violation of Commission orders, rules or regulations;.
- (d) **Cancellation of a Contract or part of a Contract** between a Customer and a Licensee;
- (e) **Suspension of License;** and
- (f) **Revocation of License.**

Service Provider: an energy supplier or Telecommunications service provider as defined in this section.

Slamming (for Telecommunications Service Providers): occurs when a company changes a Customer's Telecommunication's carrier selection without that Customer's knowledge or explicit authorization.

Slamming (for Energy Suppliers): the practice of switching a Customer's natural gas or electric supplier Account without the express consent of the Customer.

Solicitation: A communication in any medium that urges a customer to Contract for receipt of specific natural gas, electricity, or Telecommunications services from an Energy Supplier or Telecommunications Service Provider. Types of Solicitation may include, but are not limited to, telephone Solicitation, radio advertisements, print advertisements, home Solicitations, electronic advertisements (i.e. Internet), newspaper advertisements, and written Solicitations.

Standard Offer Service: Service provided by the incumbent electric Utility to 1) Customers who do not choose an electricity supplier; 2) Customers who cannot arrange to purchase electricity from an electricity supplier; and 3) Customers who contract for electricity with an electricity supplier, but who fail to receive delivery of electricity under such Contracts.

Tariff: a schedule of rates, terms and conditions governing the provision of Telecommunications or energy service on file with the Public Service Commission.

Telecommunications Service Provider: for purposes of this chapter only, any provider of Telecommunications service that was not an incumbent local exchange carrier in the District of Columbia on January 31, 1996.

Termination of Contract: cessation of a Contract for supply with an Energy Supplier or services of a Telecommunications Service Provider between the Service Provider and Customer."

Utility: every street railroad, street railroad corporation, common carrier, gas plant, gas corporation, electric company, telephone corporation, telephone line, telegraph corporation, telegraph line, and pipeline company.

Utility Consumer Bill of Rights: refers to the Commission's Consumer Bill of Rights, adopted as regulations by the PSC in the D.C. Mun. Regs. Tit. 15, Chapter 3.

3. All persons interested in commenting on the subject matter of this proposed rulemaking action may submit comments, in writing, not later than thirty (30) days after publication of this notice in the *D.C. Register*, with Reply Comments to be filed within forty-five (45) days from the date of publication in the *D.C. Register* to

Dorothy Wideman, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., West Tower, Suite 200, Washington, D.C. 20005. Copies of these proposed rules may be obtained on the Commission's website, www.dcpssc.org, or at cost, by writing the Commission Secretary at the above address.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, DC 20005

NOTICE OF PROPOSED RULEMAKING

FORMAL CASE NO. 990, IN THE MATTER OF THE DEVELOPMENT OF
LOCAL EXCHANGE CARRIER QUALITY OF SERVICE STANDARDS FOR
THE DISTRICT OF COLUMBIA

1. The Public Service Commission of the District of Columbia ("Commission"), pursuant to its authority under District of Columbia Official Code § 34-401,¹ hereby gives notice of its intent to adopt the following amendments to Chapter 27 of Title 15 of the District of Columbia Municipal Regulations ("DCMR") in not less than thirty (30) days from the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*.

2. Chapter 27, which is entitled "Regulation of Telecommunications Service Providers," contains the Commission's rules and service quality standards for telecommunications service providers in the District of Columbia. The following proposed amendments to Chapter 27 will establish the Commission's reporting requirements for service outages and incidents resulting in personal injury requiring hospitalization and death for Verizon Washington, DC Inc. in accordance with the "Omnibus Utility Amendment Act of 2004."²

**2740 REPORTING REQUIREMENTS FOR SERVICE OUTAGES AND
INCIDENTS RESULTING IN PERSONAL INJURY**

2740.1 The provisions of this section shall apply to Verizon Washington, DC Inc. ("Verizon DC"), the incumbent local exchange carrier.

2740.2 Verizon DC shall report to the Commission and to the Office of the People's Counsel certain telecommunications service outages as well as incidents that result in the loss of human life or personal injury requiring hospitalization directly or indirectly arising from or connected with its maintenance or operation of the telecommunications network within the District of Columbia.

2740.3 For outages in the District of Columbia, Verizon DC shall submit reports for those outages covered by the outage regulations established by the

¹ D.C. Official Code § 34-401 (2007 Supp.).

² D.C. Official Code § 34-401 (2007 Supp.).

Federal Communications Commission (47 C.F.R. § 4.1 *et seq.*) to the Commission and to the Office of the People's Counsel.

- 2740.4 For outages occurring during the Commission's normal business hours, Verizon DC shall notify the Commission and the Office of the People's Counsel by telephone and email within two hours after discovering the outage. For outages occurring outside of the Commission's normal business hours, Verizon DC shall notify the Commission and the Office of the People's Counsel by telephone and email within the first two hours of the next business day following the outage.
- 2740.5 Within two business days of submission of the Initial Communications Outage Report to the Federal Communications Commission pursuant to 47 C.F.R. § § 4.9 and 4.11, Verizon DC shall file a copy of that report with the Commission and the Office of the People's Counsel.
- 2740.6 Within two business days of submission of the Final Communications Outage Report to the Federal Communications Commission pursuant to 47 C.F.R. § § 4.9 and 4.11, Verizon DC shall file a copy of that report with the Commission and the Office of the People's Counsel.
- 2740.7 The Commission may require Verizon DC to file additional information concerning any reported outage, if necessary.
- 2740.8 Verizon DC shall report by telephone and email all incidents that result in the loss of human life and/or personal injury requiring hospitalization, directly or indirectly arising from or connected with Verizon DC's maintenance or operation, to the Commission and the Office of the People's Counsel within eight hours upon receiving notice of the incident.
- 2740.9 Each telephone and email report concerning the loss of human life and/or personal injury requiring hospitalization shall, at a minimum, state clearly the following information:
- (a) The location of the incident(s);
 - (b) The date and time of the incident(s);
 - (c) The total number of persons affected;
 - (d) A brief description of the incident; and
 - (e) Identification of a contact person and contact information.
- 2740.10 A written report shall be submitted to the Commission and to the Office of the People's Counsel within thirty (30) days after the completion of any

internal or governmental investigation of any incident that results in the loss of life and/or personal injury requiring hospitalization, directly or indirectly arising from or connected with Verizon DC's maintenance or operations. If there is no investigation, the report shall be submitted thirty (30) days after the incident. The report shall include:

- (a) A description of the incident(s) and information as to the cause of the event(s);
- (b) The location of the incident(s);
- (c) The exact date and time of the incident(s) occurrence; and
- (d) The total number of persons affected;
- (e) Any other known information about the incident not provided in the original notification; and
- (f) The steps Verizon DC will undertake to prevent such an occurrence in the future.

2740.11 The Commission may request additional information concerning any incident that results in the loss of life and/or personal injury requiring hospitalization, directly or indirectly arising from or connected with Verizon DC's maintenance or operations, if necessary.

3. All persons interested in commenting on the subject matter of this proposed rulemaking action may submit written comments and reply comments not later than thirty (30) and forty-five (45) days, respectively, after publication of this notice in the *D.C. Register* with Dorothy Wideman, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., West Tower, Suite 200, Washington, DC 20005. Copies of the proposed rules may be obtained, at cost, by writing the Commission Secretary at the above address or see the Commission's website at www.dcpsc.org.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, DC 20005

NOTICE OF PROPOSED RULEMAKING

**GAS TARIFF 00-2, IN THE MATTER OF WASHINGTON GAS LIGHT COMPANY'S
RIGHTS-OF-WAY SURCHARGE GENERAL REGULATIONS TARIFF, P.S.C. D.C.
No. 3**

1. The Public Service Commission of the District of Columbia ("Commission") pursuant to its authority under D.C. Official Code § 2-505,¹ hereby gives notice of its intent to act upon the proposed tariff of Washington Gas Light Company ("WGL")² in not less than thirty (30) days after the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*.

2. The Rights-of-Way ("ROW") Surcharge contains two components, the ROW Current Factor and the ROW Reconciliation Factor. On March 20, 2008, pursuant to D.C. Official Code Section 10-1141.06,³ WGL filed a tariff application to update the ROW Current Factor.⁴ In the proposed tariff, WGL sets forth the process used to recover from its customers the D.C. ROW fees paid by WGL to the District of Columbia government. Specifically, WGL proposes to amend the following page:

**GENERAL SERVICES TARIFF, P.S.C.-D.C. No. 3
Section 22
3rd Revised Page 56**

3. WGL's Tariff Application shows that the ROW Current Factor is 0.0315 with the ROW Reconciliation Factor of 0.0029 for the prior period, which yields a net factor of 0.0344.⁵ WGL asserts that its proposed tariff amendment will become effective commencing with the April 2008 billing cycle.⁶

¹ D.C. Official Code § 2-505 (2001 Ed.).

² *GT00-2, In the Matter of Washington Gas Light Company's Rights-of Way Surcharge General Regulations Tariff, P.S.C.-D.C. No. 3, ("GT00-2") Rights-of -Way Current Factor Surcharge Filing of Washington Gas Light Company, ("Tariff Application"), filed March 20, 2008.*

³ D.C. Official Code § 10-1141.06 (2001 Ed.) stating that "Each public utility company regulated by the Public Service Commission shall recover from its utility customers all lease payments which it pays to the District of Columbia pursuant to this title through a surcharge mechanism applied to each unit of sale and the surcharge amount shall be separately stated on each customer's monthly billing statement."

⁴ *GT00-2, Tariff Application at 1.*

⁵ *GT00-2, Tariff Application at 2; See also Order No. 14409, rel. August 10, 2007, where the Commission approved the Reconciliation Factor.*

⁶ *GT00-2, Tariff Application at 2.*

4. The proposed tariff amendment may be reviewed at the Office of the Commission Secretary, 1333 H Street, N.W., Second Floor, West Tower, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday as well as on the Commission's website at www.dcpsc.org. Copies of the tariff are available upon request, at a per-page reproduction cost.

5. All persons interested in commenting on the proposed tariff must submit written comments to Dorothy Wideman, Commission Secretary, at 1333 H Street, N.W., Second Floor, West Tower, Washington, D.C. 20005. Comments must be received no later than thirty (30) days after the date of publication of this NOPR in the *D.C. Register*. Persons who wish to file reply comments may do so no later than forty-five (45) days after the date of publication of this NOPR in the *D.C. Register*. Once the comment and reply comment periods have expired, the Commission will take final rulemaking action. The Commission does not intend to prevent WGL from implementing its filed surcharges. However, if the Commission discovers any inaccuracies, WGL may be subject to reconciliation of the surcharges.