

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

PUBLIC NOTICE OF FINAL RULEMAKING**TITLE 16 DCMR, CHAPTER 4
TOWING SERVICE FOR MOTOR VEHICLES**

The Director of the Department of Consumer and Regulatory Affairs (DCRA), pursuant to the authority set forth in D.C. Official Code § 47-2851.01 *et seq.* (2001), the Towing Regulation and Enforcement Authority Emergency Act of 2004, effective October 26, 2004 (D.C. Act 15-554), and Mayor's Order 2003-78, dated June 26, 2003, hereby gives notice of the adoption of a new Chapter 4 of Title 16 of the District of Columbia Municipal Regulations (DCMR). These final rules establish: (1) licensing procedures for towing service providers, (2) rules pertaining to public tows and private tows, (3) requirements for tow truck equipment and markings, (4) prohibited acts, and (5) penalty and enforcement measures and procedures.

On November 5, 2004, Public Notice of Emergency and Proposed Rulemaking for Title 16 DCMR, Chapter 4 - Towing Service For Motor Vehicles was provided in the D.C. Register (51 DCR 10234). No comments were received in response to the public notice, and no changes have been made to the rules. The Council of the District of Columbia took final action to approve the proposed rules on December 21, 2004 by voting to adopt the "Towing Regulation and Enforcement Authority Regulation Approval Resolution of 2004" (R15-813).

These final rules will become effective upon publication of this notice in the *D.C. Register*.

Title 16 DCMR (Consumers, Commercial Practices & Civil Infractions) (July 1998), Chapter 4, reads as follows:

Chapter 4 Towing Service for Motor Vehicles

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400 GENERAL PROVISIONS**400.1 [RESERVED]**

- 400.2 Except as provided herein, the provisions of this chapter shall apply to every person and entity that provides, or offers to provide, towing services within the District of Columbia, and shall apply to every person and entity that provides, or offers to provide, storage facilities for towed vehicles.
- 400.3 The provisions of this chapter shall not apply to the towing of vehicles by the government agency that owns or controls them.
- 400.4 The provisions of this chapter shall not apply to the towing of vehicles by any tow truck owned or operated by an entity or agency of the federal government or the District of Columbia Government.
- 400.5 The provisions of this chapter shall not apply to the towing of vehicles by tow trucks owned by the person or entity that owns the towed vehicles, where the tow trucks are used only to tow the tow truck owner's own vehicles and tow services are not offered to the public.
- 400.6 The provisions of this chapter shall not apply to: vehicles towed into or through the District of Columbia if the tow originates in another jurisdiction and the tow truck is licensed in that other jurisdiction, or to tow trucks registered in another jurisdiction responding to a call from the owner or operator for the removal of a motor vehicle from the District into another jurisdiction, provided that the tow truck is not equipped with a radio receiver capable of being tuned to the Metropolitan Police Radio wave lengths or frequencies.
- 400.7 Nothing contained in this chapter shall preclude any entity of the Government of the District of Columbia from establishing policies and procedures governing the towing of vehicles by or for that entity, provided that such additional policies and procedures are consistent with the provisions of this chapter.
- 400.8 Upon demand by the owner or operator of a towed vehicle, a towing business shall provide the name, address, and current telephone number of the towing business's insurance carrier, and the account number of the insurance policy.

401 INSPECTIONS AUTHORIZED

- 401.1 The Department of Consumer and Regulatory Affairs (DCRA) and other authorized government officials shall have authority to inspect towing businesses and towing service storage lots to determine compliance with these regulations. All violations discovered during inspections shall be reported to the Director, who may fine, suspend, or revoke the licenses of towing businesses, tow trucks, or towing service storage lots in accordance with this chapter.
- 401.2 Before licensing a towing business, a tow truck, or a towing service storage lot, and at any time while a license or endorsement is in effect, a towing-related business shall permit the Director and other authorized government officials or their agents to

inspect towing equipment, tow trucks, towing service storage lots, and any logs or documents related to towing services initiated within the District of Columbia.

- 401.3 To ensure compliance with these regulations, towing service storage lots shall be subject to periodic and random unannounced inspections by officials of DCRA, and officials of other government agencies authorized to inspect towing-related businesses and vehicles in the District of Columbia.
- 401.4 No person shall interfere with an inspection authorized under this section.
- 401.5 Copies of all documents, including any Notices of Infraction, computerized data, electronic records, and log book entries regarding the towing or impounding of a vehicle by a towing business or towing service storage lot shall be maintained at the primary location of the towing business indicated on the application submitted in accordance with §402, for a period of not less than three (3) years. An owner, tow truck operator, or other employee of the towing business or towing services storage lot shall surrender or arrange the surrender of such records upon lawful demand by the Director, or his/her designated agent, or other authorized government official, within one (1) hour of the time of such demand.
- 401.6 After demand has been made for records pertaining to any particular transaction, no record may be created and submitted as evidence or explanation of any towing service that had already been provided, except as may be required by an authorized government official during legal proceedings.

402 LICENSES REQUIRED FOR TOWING BUSINESSES AND TOWING SERVICE STORAGE LOTS

- 402.1 No person or entity may own or operate a towing business without having first obtained a Basic Business License and a Basic Business License Endorsement for a Towing Business as required by DC Official Code 47-2851.01 *et seq.* (2001).
- 402.2 No person or entity may own or operate a towing service storage lot without having first obtained a Basic Business License and a Basic Business License Endorsement for a Towing Service Storage Lot as required by DC Official Code 47-2851.01 *et seq.* (2001).
- 402.3 Each person or entity making application for a Basic Business License Endorsement for a Towing Business shall submit relevant information requested by the Director, in a form and manner specified by the Director, which information shall include the following:
- (a) The trade name, primary location of business, and primary phone number of the towing business;
 - (b) A list of all other locations from which the towing business will operate, and the phone numbers for such locations;

- (c) The name, address, and telephone number of each person or entity with an ownership interest in the towing business or towing service storage lot;
- (d) The primary storage location, year, make, model, Vehicle Identification Number (VIN), and license plate number of each tow truck that will be used by the towing business;
- (e) A list which includes the name, address, date of birth, driver's license number, and Social Security number of all tow truck operators, employees, agents, and contractors who will be involved in the towing business;
- (f) The location and description of the towing service storage lot to be used for the storage of towed vehicles, together with a copy of a deed, lease, contract, or other proof of the right to use the space as a vehicle storage lot, a copy of the Site plan or DC Surveyor's Plat, and a copy of a valid Certificate of Occupancy permit for that use and location;
- (g) Proof of current insurance coverage in the form of an all-risk or public liability insurance policy of at least \$750,000.00 that remains in effect or is renewable for the duration of the license period. A new certificate of insurance shall be provided whenever the coverage is changed, amended, renewed, canceled, or re-written;
- (h) A surety bond in the minimum amount of \$25,000.00;
- (i) Two copies of the billing form that the towing business proposes to use, which reflects current rates for private tows and storage services, trade name(s), business address(es) and business phone number(s).
- (j) A completed Basic Business License application;
- (k) A Certificate of Occupancy for the location of the business, if the business is not located on the same premises as the towing service storage lot;
- (l) A Clean Hands Before Receiving License or Permit Act of 1996 certification form as required by DC Official Code 47-2861 *et seq.* (2001); and
- (m) Certification that the business is registered with the Office of Tax and Revenue.

402.4

Each person or entity making application for a Basic Business License Endorsement for a Towing Service Storage Lot shall submit relevant information requested by the Director, in a form and manner specified by the Director, which information shall include the following:

- (a) The trade name, primary location of business, and primary phone number of the towing service storage lot;
- (b) A list of all other locations from which the towing service storage lot owner/operator will operate, and the phone numbers for such locations;

- (c) Any discontinuance of the availability of the towing service storage lot to the licensee during the license period shall be reported in writing to the Director at least ten (10) days prior to the expiration of the availability.
- (d) The towing business's license shall be suspended during any period of unavailability of the towing service storage lot; and
- (e) Proof of a current Garage Keeper's Legal Liability Insurance Policy of at least \$50,000.00 which remains in effect or is renewable for the duration of the license period. A new certificate of insurance shall be provided whenever the coverage is changed, amended, renewed, canceled, or re-written.

- 402.5 The Basic Business License, the Basic Business License Endorsement for a Towing Business, and the Basic Business License Endorsement for a Towing Service Storage Lot shall be valid for two (2) years from the date of issue, unless earlier revoked or voluntarily relinquished, as provided by DC Official Code 47-2851.09 (2001).
- 402.6 Any changes (additions or deletions) to information provided in an application for a license or endorsement shall be provided to DCRA within fourteen (14) days of the date of the change in a manner specified by the Director.
- 402.7 All persons with financial interests in towing businesses or towing service storage lots shall be identified on the applications for licenses and endorsements under these regulations, and shall be subject to all provisions of this chapter and the Business and Professional Licensing Administration of the DCRA.
- 402.8 No person may operate a tow truck, or own or operate a towing business or towing service storage lot, who has been convicted within the preceding five (5) years of a misdemeanor or felony, the elements of which involve motor vehicle theft or fraud, including but not limited to; tampering with auto, attempted unauthorized use of a vehicle and taking property without right.
- 402.9 Before approving any application for a license or endorsement to own or operate a towing business or towing service storage lot, the Director is authorized to conduct any investigation which the Director deems necessary to determine the applicant's qualification to own or operate a towing business or towing service storage lot without detriment to the public. The Director's investigation may include, but shall not be limited to, inquiries into driving and criminal records.

403 TOW TRUCK LICENSES

- 403.1 No person may operate or use any tow truck in a towing business unless such tow truck has been identified in the application (or amended application) for the Basic Business License Endorsement for such towing business, and unless the Director has inspected, approved, and authorized issuance of a DCRA unique alphanumeric identifier for such tow truck.

- 403.2 Upon approval by the Director of an application, and the payment of the prescribed fees, the Director shall issue a license authorizing the operation of each tow truck identified or described in the application.
- 403.3 No tow truck may be licensed unless it bears a valid inspection sticker and valid registration issued by the District of Columbia Department of Motor Vehicles.
- 403.4 The license shall be affixed and prominently displayed on the tow truck, in a location specified by the Director.
- 403.5 In case of loss, mutilation, or destruction of a license, the Director may issue a duplicate upon proof of the fact of loss and payment of the prescribed fees. A police report shall constitute proof of such loss.

404 REQUIRED TOW TRUCK EQUIPMENT AND MARKINGS

- 404.1 A towing business shall have available for its exclusive use a minimum of one (1) fully equipped and licensed tow truck.
- 404.2 The trade name, primary location of business and primary phone number of the towing business shall appear on both doors of the cab of the tow truck in contrasting paint or vinyl lettering not less than 3" in height.
- 404.3 The minimum and maximum private towing and storage fees charged by the towing business shall appear on both sides of the tow truck in contrasting paint or vinyl lettering not less than 2" in height.
- 404.4 The unique alphanumeric identifier issued by DCRA to each tow truck shall appear on both sides of the tow truck in contrasting paint or vinyl lettering not less than 1" in height.
- 404.5 Each tow truck shall be equipped with a two-way communication system capable of transmitting and receiving messages between the towing business's office and the tow truck anywhere in the District of Columbia. The towing business shall have all permits and licenses required by District of Columbia and Federal law to operate the communications system.
- 404.6 Each flat-bed tow truck shall have four (4) safety tie-down devices, chains, or straps in any combination. Chains used for light-duty tows (i.e., vehicles with a gross vehicle weight less than 4,000 pounds) shall be "grade 7" high-test chains, a minimum of 5/16" in diameter. Straps shall be 2" webbing with an 8,000 pound-per-linear-inch rating. Chains and straps shall be equipped with a "transportation cluster." Straps shall have a ratchet device.
- 404.7 If a tow truck is engaged in recovery, it shall have at least one (1) recovery chain of a minimum of "grade 8" alloy, which is a minimum of 5/16" in diameter. In addition, it shall have two (2) four-ton (manufacturer-stamped) snatch blocks with one 4" pulley equipped with locking devices.

- 404.8 Each crane tow truck shall have at least a retracted boom, rated at four-tons, with one four-ton winch equipped with a minimum of 75 feet of 3/8" wire rope. The cable must be able to support a load equal to or greater than the capacity of the winch. The boom must be able to support a load equal to or greater than the capacity of the winch or winches. Industry standards require a swage and thimble to be used when the wire rope is terminated with a fixed hook. A clip may only be used for an emergency repair. Each crane tow truck shall have dollies with securing devices.
- 404.9 Each wheel lift tow truck shall have a minimum capacity of 3500 pounds. This standard applies whether wheel lift is on a stand-alone towing vehicle or is in combination with a crane tow truck or flat bed tow truck. In addition, each wheel lift tow truck shall have straps which have 2" webbing with an 8,000 pound-per-linear-inch rating. Chains and straps shall be equipped with a "transportation cluster." Straps shall have a ratchet device.
- 404.10 All tow trucks shall have the following equipment, in good working order:
- (a) One (1) all-purpose 5-pound fire extinguisher (rated 5ABC or better);
 - (b) One (1) set of wheel blocks;
 - (c) A minimum of two (2) gallons of commercial absorbent to be used as a quick cover up for minor oil/gasoline spills;
 - (d) An air compressor and/or portable air tank equipped with hose and tire chuck for tire inflation;
 - (e) A minimum of two (2) red flags not less than 12" x 12" in size;
 - (f) Two (2) portable red reflectors and two (2) red flares;
 - (g) A set of tools which includes a set of screwdrivers, a wrecking bar, a working flashlight, a set of lug wrenches, a jack, jumper cables, and a first-aid kit; and
 - (h) At least one (1) of each of the following: broom, shovel, waste container, and axe.
- 404.11 It shall be unlawful for a tow truck operator to tow a vehicle without properly using equipment that meets the manufacturer's minimum specifications for the towing of a specified vehicle.

405 TOWING SERVICE STORAGE LOT REQUIREMENTS

- 405.1 A towing service storage lot shall be located on a secured lot in the District of Columbia, with appropriate and descriptive signage, and be in full compliance with all District of Columbia laws, regulations, including zoning regulations.

- 405.2 The towing service storage lot operator shall maintain a log of all vehicles towed to and from its location. The operator shall maintain the log and make it available for inspection as follows:
- (a) It shall be available to DCRA investigators and other authorized government officials whenever the lot is open for business and at other reasonable times during regular business hours;
 - (b) It shall record the receipt and release of every vehicle towed to or from the lot, and for each vehicle shall include identification of the towing business responsible for the tow, the vehicle identification number (VIN), the make, model, year, color, license state, and tag number of the stored vehicle, the owner of the vehicle (if known), and, if a public tow, shall include the Department of Public Works (DPW) towing control number;
 - (c) It shall also record the date and time the vehicle arrived at the towing service storage lot, a description of any damage to the vehicle upon its arrival, the date and time of removal from the lot, a description of any damage to the vehicle upon its removal, and the person or entity to whom the vehicle was released; and
 - (d) It shall be maintained and available for inspection for three (3) years after the date of the last entry.
- 405.3 Prior to releasing a public tow vehicle, the operator of a storage lot shall contact the DPW Towing Control Center by telephone and report the date and time of the scheduled release, the condition of the vehicle, and to whom the vehicle is to be released.
- 405.4 The holder of a Basic Business License Endorsement for a Towing Service Storage Lot shall apportion the lot into storage lot sections and clearly identify or designate the towing business responsible for each apportioned section.
- 405.5 When a towing service storage lot is used by more than one towing business, the holder of a Basic Business License Endorsement for a Towing Service Storage Lot shall clearly designate individual storage spaces for each vehicle and shall clearly identify the towing business assigned to each space.
- 405.6 The holder of a Basic Business License Endorsement for a Towing Service Storage Lot shall employ reasonable procedures and requirements to insure that vehicles are released to rightful owners or other authorized individuals.
- 405.7 A printed "Owner's Bill of Rights for Towed Vehicles" statement, issued by the Director, shall be given to the vehicle owner or operator by the tow truck operator before initiating the tow, if either the vehicle owner or operator is on the scene of the tow. The holder of a Basic Business License Endorsement for a Towing Service Storage Lot shall conspicuously post, at each towing service storage lot, the Owner's Bill of Rights for Towed Vehicles statement and, upon release of the vehicle, shall provide a copy of this statement to the person to whom the vehicle is released.

406 PUBLIC TOWS

- 406.1 All public tows will be requested by government officials through DPW in accordance with its published central tow ordering and dispatching procedures. Any towing business to be used by the District government to conduct public tows must be licensed in accordance with these regulations, and must agree to the rules established by DPW under its central tow ordering and dispatching procedures.
- 406.2 When a public tow is required, the owner of the vehicle shall be responsible for all charges associated with towing and storing the vehicle, except as may otherwise be provided in this chapter.
- 406.3 No public tow shall be conducted in the District of Columbia until DPW has issued a towing control number for that tow, except in the case of an emergency as set forth in §406.5. After receiving a towing control number from DPW, the tow truck operator shall place the towing control number on the vehicle to be towed in a manner prescribed by DPW. The towing control number shall be used on all documents related to the tow.
- 406.4 Before initiating a public tow from private real property, or a public tow at the direction of a government entity, a towing business shall provide the following information to DPW, in a manner prescribed by DPW:
- (a) The name of the tow truck operator, the name of the towing business and the crane number;
 - (b) The make, model, year, color, license state, and tag number of the vehicle to be towed;
 - (c) The VIN of the vehicle to be towed;
 - (d) The name, address, and phone number of the person requesting the tow, and the governmental authority of the person requesting the tow (e.g., police officer, parking enforcement official, etc.) if the tow is requested by a government entity;
 - (e) The reason for towing the vehicle, including the ticket number and violation cited by the governmental authority, if any;
 - (f) The current location of the vehicle;
 - (g) The nature and location of any damage to the vehicle;
 - (h) The address of the place where the vehicle will be towed; and
 - (i) The address, in the District of Columbia, where the vehicle can be reclaimed.

- 406.5 In an emergency, a police officer may direct a tow truck operator to tow a vehicle before the towing business provides all of the information required by §406.4 In those instances, the information required by §406.4 shall be furnished and a towing control number obtained as soon thereafter as practicable, but in no event more than two (2) hours after the vehicle has been towed.
- 406.6 When a vehicle is involved in an accident, a public tow of the vehicle shall be ordered if necessary in the judgment of the governmental authority at the scene of the accident.
- 406.7 No vehicle may be towed from private real property, without the consent of the owner of the vehicle, unless that vehicle has been issued a citation by a police officer or parking enforcement official or at the direction of a police officer in an emergency. Under such circumstances, the owner of the vehicle shall be responsible for all charges associated with towing and storing the vehicle. All public tows from private real property shall be conducted in compliance with the provisions of D.C. Official Code §§50-2621 through 50-2624 (2001), which govern the disposition of vehicles left on private property in the District of Columbia.
- 406.8 Any loss or damage sustained by a vehicle as the result of a public tow by a towing business shall be the sole and entire responsibility of the towing business and not the Government of the District of Columbia, any department or agency thereof, or any government official who requested the tow. The towing business shall assume all liability for the vehicle and the property inside the vehicle, from the point of hook-up until the vehicle is released to its owner or authorized representative. The towing business shall take all precautions necessary to protect persons or property against injury or damage, and shall provide personnel sufficiently trained and capable to perform tows in accordance with the vehicle manufacturer's directions for towing a particular vehicle.
- 406.9 When an authorized government official directs the towing of a vehicle to a towing service storage lot, the government official shall notify the vehicle owner of record in accordance with DPW procedures, of the tow and storage, the storage location of the vehicle, and all other information required to be given under applicable District law.
- 406.10 When a vehicle is towed as a public tow, the government shall notify the vehicle owner of record, in a manner prescribed by DPW, of the tow and storage, the storage location of the vehicle, and all other information required to be given under applicable District law.

407 PRIVATE TOWS

- 407.1 A private tow shall not be subject to the requirements of §406, but shall be subject to all other sections of these regulations.
- 407.2 Before a towing business may undertake the private tow of a vehicle in the District of Columbia, the towing business must obtain written consent for the tow from the owner, lien holder, owner's agent, or operator of the vehicle.

408

PAYMENT FOR SERVICES

408.1

The maximum rates that may be charged for all public tows initiated within the District of Columbia, and for all other services, including vehicle storage charges, related to public tows shall be as follows:

- (a) \$50 for providing Road Service for all vehicles, including all services provided to restore and or maintain operation of a vehicle, including services such as repairing tires, recharging batteries, and delivering gasoline;
- (b) For Standard Towing Services, which apply to any passenger vehicle or any other vehicle with a Gross Vehicle Weight of 8,000 pounds, or less:
 - (1) \$100.00 for Preparation, hoist, and tow to location within the District (Roll-back or wheel lift - use of dollies included);
 - (2) \$3.00 for Towing charge per mile for each mile beyond the District line (at owner's request); and
 - (3) \$20.00 for Storage, per 24-hour period, or part thereof.
- (c) For Heavy-Duty Towing, which applies to any vehicle with a Gross Vehicle Weight over 8,000 pounds:
 - (1) \$275.00 for Preparation, hoist, and tow to a location within the District (Roll-back or wheel lift - use of dollies included);
 - (2) \$6.00 for Towing charge per mile beyond the District line (at owner's request); and
 - (3) \$20.00 for Storage per 24-hour period, or part thereof.
- (d) \$50.00 for Discontinuance Fee ("Drop Fee") that is charged when the operator of a vehicle that is to be towed asks that the tow be discontinued and the police officer or other official who requested the tow agrees to discontinue the tow, in accordance with 16 DCMR 408.6.

408.2

No rates charged by a towing business for private tows may exceed the rates set forth in the towing business's Basic Business License Endorsement application (including amendments thereto).

408.3

The holder of a Basic Business License for a Towing Business may collect extra charges on-site for the use of cranes, winches, dollies, or other equipment or services to perform a public tow under extraordinary circumstances or for the restoration or cleaning of an accident site. Within 72 hours after collecting extra charges, the towing business must submit documentary evidence of the extraordinary circumstances to the Director along with a written request for approval of the charges. The Director shall provide a written response within 14 calendar days of receipt of the request for

approval. If the Director does not approve extra charges, the licensee of a towing business must provide a refund to the customer in the amount of the disapproved charges within 72 hours of receipt of the Director's notice of disapproval.

- 408.4 Storage charges may accrue for any day that the facility is closed to the public so long as the facility is open for the reclaiming of vehicles for at least ten (10) hours per day, Monday through Friday, during normal business hours, and for at least five (5) hours a day, during normal business hours, on either Saturday or Sunday.
- 408.5 If a tow truck responds to a dispatch, and the police officer or other official who requested the public tow determines that services are no longer required, no charge shall be made by the towing business or service, except as may be authorized by a contract with a government agency. If a towing control number has been issued, the towing business shall notify the DPW Towing Control Center by telephone.
- 408.6 If a tow truck has applied chains, a dolly, a winch, or other towing device to prepare a vehicle for public tow, and the owner or operator of the vehicle appears and asks that the tow be discontinued, upon concurrence by the police officer or other official who requested the tow (if present), the tow truck operator shall comply, upon payment by the vehicle owner or operator of the rates established for a discontinued public tow. If a towing control number has been issued, the towing business shall promptly notify the DPW Towing Control Center by telephone.
- 408.7 Unless a towing service storage lot has been notified by a governmental official that a stored vehicle is to be held for evidentiary or other legally permissible purposes, the towing service storage lot shall promptly release the vehicle to the owner or the owner's agent when presented with proof of personal identity and ownership or authorization to reclaim the vehicle, and upon payment of all towing and storage charges due.
- 408.8 Towing businesses and towing services storage lots shall accept as payment for public towing and storage charges, cash, insurance draft, certified check, bank check, money order, and at least two (2) of the most widely-used, nationally recognized credit cards.
- 408.9 The owner or operator of the towing service storage lot shall provide to the person to whom the vehicle is released the following:
- (a) The towing control number;
 - (b) The Notice of Infraction or other legal authority for removal of the car;
 - (c) An itemized statement of the charges due;
 - (d) A receipt for all monies paid; and
 - (e) A copy of the Owner's Bill of Rights for Towed Vehicles.

- 408.10 No repair work shall be done on any vehicle ordered moved by a government official unless the owner of the vehicle or the owner's authorized agent specifically authorizes repair work in writing.
- 408.11 Written authorization for repair work to any vehicle ordered moved by a government official shall be made on a separate form which clearly indicates that the form authorizes repair work. The form shall not contain any text in a font size smaller than 10 points.
- 408.12 Not less than one year after publication of this final rulemaking, the schedule of maximum rates will be reviewed upon written request, which includes a cost justification, for consideration by the Director. Subsequent written requests for review of the schedule of maximum rates will be considered not less than 24 months after a prior rate review.
- 408.13 After considering a request for review of the schedule of maximum rates, the Director, in consultation with the DPW Director, shall determine if the schedule of maximum rates should be changed.

409 ITEMIZED STATEMENTS AND RECEIPTS

- 409.1 Before commencing a private tow, the tow truck operator shall furnish to the owner or operator of the vehicle to be towed a signed and itemized estimate of charges for the tow and other services to be rendered, on a form approved by the Director. The owner or operator of the vehicle shall sign the form before commencement of the tow.
- 409.2 Each itemized estimate of charges, as prescribed in §409.1, shall contain the following:
- (a) The location from which and to which the vehicle is to be towed;
 - (b) The name and address of the towing business and the name of the tow truck operator;
 - (c) If available, the name and address of the owner or operator of the vehicle to be towed;
 - (d) A brief description of the vehicle to be towed;
 - (e) The license plate number and state of registration of the vehicle to be towed;
 - (f) An itemized estimate of fees to be charged for towing services;
 - (g) The maximum rate charged per 24 hour period or part thereof, for the storage of the towed vehicle, and a statement that the 24 hour period shall start when the vehicle enters the towing service storage lot; and

(h) The location of the towing service storage lot or repair facility to which the vehicle will be towed.

- 409.3 After rendering the towing and related services, the tow truck operator shall enter upon the itemized statement the actual amount paid for services rendered, and shall sign the statement to acknowledge receipt of payment.
- 409.4 A copy of each statement and receipt submitted by a tow truck operator in accordance with the requirements of this section shall be retained by the towing business for three (3) years from the date of issuance, and shall be exhibited upon demand to the Chief of Police or the Director or their agents.
- 409.5 The direction to tow by an authorized official, in accordance with any section of these regulations, shall not constitute an agreement on his/her behalf, or on behalf of the agency for which he/she works, to pay any charges in connection with the tow, but shall constitute only an authorization to remove the motor vehicle.
- 409.6 The owner of a towed vehicle shall be responsible for paying all charges for a public tow, and all related towing services charges, in an amount not to exceed the charges authorized by the Director pursuant to §408.1.
- 409.7 Payment of all lawful towing and storage charges shall be made by the owner of the vehicle, an agent of the owner, or the insurer of the vehicle before the vehicle is released by the towing business, the tow truck operator, or towing service storage lot operator.

410 PROHIBITED ACTS

- 410.1 It shall be unlawful for any person or entity to offer, solicit, or engage in the towing business or to operate a towing service storage lot without holding a valid, current license or endorsement required by these regulations.
- 410.2 It shall be unlawful for any person or entity conducting a towing business, or for any person acting on his/her behalf, to represent falsely, either expressly or by implication, that the towing business represents, or is approved by, any private organization which provides emergency road service for disabled motor vehicles.
- 410.3 In any accident case requiring a report to the police, it shall be unlawful for a tow truck operator to move a vehicle involved in that accident from the position in which the vehicle came to rest after the accident until authorized to do so by a police officer, except in life threatening situations, or to the extent necessary to free person(s) who may be trapped in or by the vehicle.
- 410.4 It shall be unlawful for any person or entity conducting a towing business, or any agent for such person or entity, to require an owner/operator of a motor vehicle involved in an accident or breakdown, to sign an agreement for repair work as a condition to providing towing service for the vehicle.

- 410.5 It shall be unlawful for a tow truck operator to use any public space for the accommodation of a vehicle removed from the scene of an accident or breakdown, except as the use of that public space may be directed by a police officer.
- 410.6 It shall be unlawful for any person or entity conducting a towing business, and for any person acting on his/her behalf, to charge more than one (1) towing fee when the owner/operator of a disabled vehicle requests transport of the vehicle to a repair facility owned or operated by the person or entity conducting the tow.
- 410.7 Tow truck operators shall not tow vehicles to a repair facility unless the owner or the owner's designated representative gives written consent before removal of the vehicle.
- 410.8 It shall be unlawful for any towing business owner or tow truck operator, and any person acting on his/her behalf, to install or maintain in a tow truck or in any other place, a radio receiver capable of being tuned to the MPD radio frequencies.
- 410.9 It shall be unlawful for any tow truck operator to stop at the scene of any accident and furnish any towing service, unless he or she has been called to the scene by the owner/operator of a disabled vehicle or authorized by DPW to provide such service at that accident scene.
- 410.10 It shall be unlawful for a tow truck operator to deposit upon public space a vehicle that is inoperable or in a state of disrepair, except temporarily and for emergency purposes at the direction of a police officer or other authorized official. It shall also be unlawful for a tow truck operator to deposit such vehicles upon private property except with the express permission of the owner of such property.
- 410.11 No towing service provider may refuse to provide to the owner or owner's agent, an itemized receipt for all lawful charges made in connection with the towing and storage of a vehicle.
- 410.12 It shall be unlawful for towing service providers to charge more for public tows than is permitted by the Director.
- 410.13 Prior to payment of fees and release of a vehicle, no towing service provider may refuse the right of physical inspection of the towed vehicle when requested by the owner, an authorized agent of the owner, the lien holder, or the insurer of the vehicle.
- 410.14 No person shall refuse to surrender to DCRA upon lawful demand, any license or endorsement that has been suspended, revoked, or canceled.
- 410.15 Failure to notify the DPW and obtain a towing control number before initiating a public tow in the District of Columbia shall be a violation of these regulations, except as provided in §406.5.
- 410.16 No towing service provider shall permit any unlawful use of a towing license or endorsement. Any act or omission by a person acting on behalf of a licensed or endorsed towing business, tow truck operator, or towing service storage lot, may be considered the act or omission of the licensed or endorsed person or entity, which act

or omission, if in violation of this chapter, shall be cause for denial, suspension or revocation of a license or endorsement.

- 410.17 It shall be unlawful for any tow truck operator to tow any type of vehicle in a manner that is not in accordance with the vehicle manufacturer's instructions for the vehicle. In addition, it shall be unlawful for any tow company to utilize any tow truck or equipment in a manner that is not in accordance with the tow crane manufacturer's instructions for towing vehicles.
- 410.18 It shall be unlawful for any towing business or tow truck operator to tow vehicles in the District of Columbia without current insurance coverage in the form of an all-risk or public liability insurance policy of at least \$750,000.00.
- 410.19 It shall be unlawful for any towing business to refuse to provide a refund to customers within 72 hours of receipt of the Director's notice of disapproval, when charges described in 408.3 are not approved by the Director.

411 PENALTIES AND ENFORCEMENT

- 411.1 DCRA shall be responsible for the enforcement of regulations regarding towing businesses and towing service storage lots. Authorized officials of other government agencies may conduct inspections and issue citations for violations or refer them to DCRA for fines, suspension, or revocation of a license or endorsement.
- 411.2 Any person who believes that a violation of these regulations, or the laws of the District of Columbia on which they are based, has occurred, may file a complaint with the Director, who shall investigate the complaint and take appropriate action.
- 411.3 The Director may summon the owner of a towing business, a tow truck operator, or the owner of a towing service storage lot to appear before an administrative tribunal to respond to alleged violations of the provisions of this chapter.
- 411.4 A license or endorsement issued under these regulations may be suspended or revoked by the Director for any of the following reasons:
- (a) The application for the license or endorsement contained a false statement of a material fact, or failed to reveal a material fact which, if disclosed at the time the application for the license was filed, would have constituted just cause for denial of the application;
 - (b) Failure of the licensee to comply with the provisions of this chapter;
 - (c) Any charges for towing service or storage for public tows made in excess of the charges set forth by the Director;
 - (d) Failure of the licensee to comply with the provisions of the General License Law, D.C. Official Code §47-2851.01 (2001), *et seq.*;

- (e) Engaging in, or holding oneself out as engaging in, towing services or the operation of a towing service storage lot without having current and valid licenses or endorsements, or without having the equipment, insurance, and available storage facilities required by this chapter;
- (f) Violation of the traffic laws or regulations of the District of Columbia;
- (g) Failure to maintain qualifications and insurance required by this chapter;
- (h) Failure to compensate vehicle owners for damage to their vehicles caused by, or due to the negligence of, the operators of a tow truck or towing service storage lot, and failure to reasonably secure and protect a towed vehicle and property therein; or
- (i) Failure to pay fees, taxes, fines or other monetary obligations to the Government of the District of Columbia or the Government of the United States.

- 411.5 Any entity whose towing business or towing service storage lot license and endorsement has been revoked shall not be eligible to make application for a new towing business or towing service storage lot license and endorsement for a period of one (1) year from the date of revocation.
- 411.6 Any person or entity adversely affected by the denial, revocation, or suspension of a tow truck license, towing business or towing service storage lot license and endorsement, or who has been fined or otherwise disciplined in accordance with the provisions of this chapter, may file an appeal in writing with the Board of Appeals and Review of the District of Columbia or its successor.
- 411.7 In addition to any other penalty prescribed by law, any violation of this chapter shall be grounds for revocation or suspension of the license issued under this chapter, either before or after conviction.
- 411.8 A towing business or tow truck operator who performs towing services, and any person or entity who operates a towing service storage lot, without a license or endorsement, or with a license that has been revoked or is currently suspended, may be subject to arrest, fine and imprisonment.
- 411.9 Tow truck operators shall be responsible for removing all accident debris from the roadway before towing any vehicle involved in a collision. Failure to do so shall be grounds for disciplinary action, including suspension or revocation of the tow truck license, and suspension or revocation of the towing business's license.
- 411.10 The tow truck operator shall report the presence and the location of debris believed to contain hazardous materials to the DPW Towing Control Center by telephone. Failure to do so shall be grounds for disciplinary action, including fines, suspension or revocation of the tow truck license, and suspension or revocation of the towing business' license.

- 411.11 Upon the request of any District government official, a towing business or a tow truck operator shall provide documentary proof of current insurance coverage in the form of an all-risk or public liability insurance policy of at least \$750,000.00. Failure to do so shall be grounds for disciplinary action, including fines, suspension or revocation of the tow truck license, and suspension or revocation of the towing business's license.
- 411.12 Failure to provide a refund as described in 410.19 shall be grounds for disciplinary action, including fines, suspension or revocation of the tow truck license, and suspension or revocation of the towing business' license.
- 411.13 If the person or entity licensed under 402.3 is unable to use the towing storage lot identified in 402.3(f) for any reason during the license period, then:
- (a) The licensee shall report this fact in writing to the Director at least ten (10) calendar days prior to the day when the towing service storage lot will become unavailable;
 - (b) The Basic Business License Endorsement for a Towing Business shall be automatically suspended by operation of law during the period that the towing service storage lot is unavailable for use by the licensee; and
 - (c) The Basic Business License Endorsement for a Towing Business may be reactivated without charge for the remainder of the license period when written evidence of the availability of a substitute towing service storage lot is supplied to the Director by the licensee and verified by the Director, or his designee.
- 411.14 Instead of any criminal sanctions authorized by law, civil fines and penalties may be imposed as alternative sanctions for any infraction of these regulations.
- 411.15 Adjudication of any civil infraction shall be pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, (DC Official Code 2-1801.01 *et seq.* (2001)).

412 LICENSING FEES

- 412.1
- (a) The fee for a towing business license shall be \$775.00 per annum, payable biennially.
 - (b) The fee for a towing service storage lot license shall be \$150.00 per annum, payable biennially.
 - (c) The fee for a towing vehicle license shall be \$163.00 per annum, payable biennially.
 - (d) The fee for replacing a lost or damaged towing related license shall be \$25.00.

413-498 [RESERVED]

499 DEFINITIONS

499.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Authorized Government Official- A District government official authorized by law, regulation or Mayor's order to conduct inspections and/or enforcement actions consistent with this chapter.

Basic Business License – the single document designed for public display issued by the business license center that certifies District agency license approval and incorporates the endorsements for individual licenses included in the Basic Business License system.

Basic Business License Endorsement for a Towing Business – the individual license endorsement required for the conducting of a towing business in the District of Columbia.

Basic Business License Endorsement for a Towing Service Storage Lot - the individual license endorsement required for the maintenance of a towing service storage lot in the District of Columbia.

Crane service – a form of towing service which involves moving vehicles by the use of a wheel-lift device, such as a lift, crane, hoist, winch, cradle, jack, automobile ambulance, tow dolly, or any other similar device.

Director – the Director of the Department of Consumer and Regulatory Affairs (DCRA) of the District of Columbia, or his/her designated agent.

Extraordinary Circumstances – conditions or events that are beyond what is usual, regular, or customary and which require special towing functions or services to commence or complete a tow.

Flat-bed service – a form of towing service which involves moving vehicles by loading them onto a flat-bed or roll-back platform instead of using a crane or winch to tow a vehicle.

Normal Business Hours – the hours of 8:00 a.m. through 6:00 p.m.

Owner – the person or entity to whom a vehicle is registered, or to whom it is leased, if the terms of the lease require the lessee to maintain and repair the vehicle. The holder of a contract with a vehicle rental agency shall not be considered the owner of that vehicle.

Police officer – a sworn or reserve officer of the Metropolitan Police Department or any other law enforcement agency with authority to make arrests within, and enforce the laws of, the District of Columbia.

Private tow – the towing of a vehicle at the request of the owner or the authorized agent of the owner.

Public tow – the towing of a vehicle, other than a vehicle owned or controlled by a government entity, at the direction or arrangement of a government entity or, without the consent of the owner or operator of the vehicle, including relocations, repossessions, and tows from private real property.

Relocation – the public tow of a vehicle because it is illegally parked, or for some exigent circumstance that necessitates its removal to a nearby location, but not to a towing service storage lot.

Towing business – any person or entity that provides, or offers to provide, towing services.

Towing control number – a unique number issued by the Department of Public Works to identify and track a vehicle towed in the District of Columbia.

Towing service – any service that involves towing or otherwise moving motor vehicles by means of a tow truck.

Towing service storage lot – a property used to deposit and store vehicles that have been towed.

Tow truck – a motor vehicle equipped to provide either crane or flat-bed towing service.

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

NOTICE OF FINAL RULEMAKING

**FORMAL CASE NO. GT02-1, IN THE MATTER OF THE APPLICATION
OF WASHINGTON GAS LIGHT COMPANY FOR AUTHORITY TO AMEND
ITS GENERAL SERVICE PROVISIONS**

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Section 2-505 of the District of Columbia Code,¹ of its final rulemaking action taken in the above-captioned proceeding. On January 13, 2005, the Commission released Order No. 13483, approving the Application of Washington Gas Light Company ("WGL" or the "Company") to amend the following tariff pages:²

**GENERAL SERVICES PROVISION, P.S.C. of D.C. No. 3
Firm Delivery Service Gas Supplier Agreement No. 5
6th Revised Page No. 27G
6th Revised Page No. 27H**

2. On July 9, 2004, WGL filed its revise Rate Schedule No. 5 regarding mandatory capacity release in accordance with Commission Order No. 13201 in this proceeding.³ The tariff filing also requested permission to require competitive suppliers to take assignment of certain firm transportation resources. By allowing that assignment, WGL reasons that it will determine the capacity requirements to serve the design day demand of each supplier's customers. WGL also maintains that the assignment of capacity will be determined from firm transportation, storage, and peaking resources based on the company's portfolio mix at that time. WGL's tariff amendment makes storage and peaking capacity assignments mandatory and firm transportation capacity partially mandatory.

3. In addition, this tariff revision will assign suppliers with 50 percent of their transportation capacity requirement from the Company's current portfolio of firm

¹ D. C. Code, 2001 Ed. § 2-505.

² *Formal Case No. GT02-1, In the Matter of the Application of Washington Gas Light Company for Authority to Amend its General Service Provisions*, Letter to Sanford M. Speight, Acting Commission Secretary, from Bernice K. McIntyre, Senior Counsel for Washington Gas Light Company, re: Formal Case No. GT02-1, filed July 9, 2004 (hereinafter referred to as "Application").

³ *Id.*

primary point transportation contracts. WGL asserts that this Application was submitted in compliance with Order No. 13201.⁴

4. A Notice of Proposed Rulemaking was published in the *D.C. Register* on August 13, 2003.⁵ Pepco Energy Services, Inc. filed an opposition to WGL's Application on September 10, 2004.⁶ The Office of People's Counsel filed its comments on September 13, 2004 and subsequently, WGL filed comments replying to both parties previous submissions.⁷ The Commission approved WGL's Application by Order No. 13483. WGL's tariff amendment will become effective upon the date of publication of the Notice of Final Rulemaking in the *D.C. Register*.

⁴ *Id.*

⁵ 51 D.C. Reg. 7767 (September 12, 2003).

⁶ *Formal Case No. GT02-1*, Pepco Energy Services, Inc.'s Opposition, filed on Sept. 10, 2004.

⁷ *Formal Case No. GT02-1*, Office of People's Counsel, Comments, filed on September 13, 2004. In addition to *Formal Case No. GT02-1*, Washington Gas Light Company's Reply, filed on September 27, 2004.

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

NOTICE OF FINAL RULEMAKING

FORMAL CASE NO. 712, IN THE MATTER OF THE INVESTIGATION INTO
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 Sections 2-505 (a), 34-302, and 34-1516 of the District of Columbia Code,¹ of its final rulemaking action taken on January 12, 2005, in Order No. 13482, adopting the amended Section 609.7 in Chapter 6, "Pay Telephones," of Title 15 of the District of Columbia Municipal Regulations ("DCMR").² The amended rule replaces the existing rule. Section 609.7 shall now read:

609.7 PSPs shall adequately maintain their pay telephones at all times.

- (a) The PSPs' duty to provide adequate maintenance to their pay telephones shall apply not only to the performance and operational characteristics of pay telephone(s) as outlined in Sections 609.1 to 609.6, and 609.8, but shall also include the PSPs' duty to take all reasonable measures necessary to keep their pay telephone instruments and housing clean and presentable for public use, absent of any debris, unsanitary substances or defacement, including graffiti, unlawful writings, markings, gougings, and scratchings; and
- (b) PSPs shall remediate any noncompliance respecting this section according to the requirements outlined in Section 609.9, *infra*.

2. Through this amendment, the Commission adds new language to Section 609.7, placing a duty on Pay Telephone Service Providers to use all reasonable means to keep their pay telephones graffiti-free, and to maintain them in a clean and sanitary condition. The Commission issued a Notice of Proposed Rulemaking ("NOPR") that was published in the *D.C. Register* on January 16, 2004.³ Comments in response to the

¹ D.C. Code, 2001 Ed. §§ 2-505, 34-320, and 34-1516.

² 15-DCMR § 600 *et seq.* (2001).

³ 51 *D.C. Reg.* 793-794 (2004).

NOPR were filed by the Office of People's Counsel ("OPC").⁴ OPC expressed support for the proposed revised rule and suggested no other modifications. Additional copies of the final rule may be obtained by writing Christine D. Brooks, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., 2nd Floor, West Tower, Washington, D.C. 20005.

⁴ *F.C. No. 712, Comments of the Office of People's Counsel Regarding the Proposed Amendment to the Pay Telephone Rules (March 1, 2004).*

DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

NOTICE OF FINAL RULEMAKING

The Director of the District of Columbia Department of Transportation, pursuant to the authority of section 3(b) of Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code § 50-921.02(b)); the Urban Forest Preservation Act of 2002, effective June 12, 2003 (D.C. Law 14-309; D.C. Official Code § 8-651.01 *et seq.*) (“the Act”); Mayor's Order 2003-11, January 16, 2003, and Mayor's Order 2003-173, December 1, 2003), hereby gives notice of the adoption of a new Chapter 37 to the Public Space and Safety Regulations (24 DCMR). Chapter 37, entitled Special Trees, implements the Act, which established an urban forest preservation program requiring a Special Tree Removal Permit prior to the removal of a tree with a circumference of 55 inches or more.

Notices of proposed rulemaking to establish Chapter 37 were published in the D.C. Register on February 6, 2004 (51 DCR 1446), April 30, 2004 (51 DCR 4555), and November 12, 2004 (51 DCR 10471). Comments were received with regard to all versions of the Notices. Pursuant to Section 103(b) of the Act (D.C. Official Code § 8-651.03(b)), the Director submitted the last published version of the proposed rules to the Council of the District of Columbia for review and approval. The Council approved the rules, pursuant to Resolution No. R15-814, on December 21, 2004.

In response to comments received from the public and from Councilmembers during a Council public roundtable held on December 9, 2004, minor, non-substantive revisions have been made to the rules to clarify their intent. In particular, the Department has addressed the concern that the proposed provision pertaining to campus plans and other such proceedings could not be easily found. In response, the final rules provide a stand-alone subsection (§ 3702.4) to address this concern. The provision is intended to clarify that a piece of “private property” may serve as the location on which replacement trees may be planted pursuant to these regulations even though the same trees are planted in accordance with plans approved by another District agency. However, a previously planted tree may not serve as a replacement tree regardless of whether another District agency has approved or required the tree planting.

These final rules will become effective upon publication of this notice in the D.C. Register.

TITLE 24, DCMR, Public Space and Safety, is amended by adding a new Chapter 37 to read as follows:

Chapter 37 SPECIAL TREES**3700 SPECIAL TREE REMOVAL PERMIT**

3700.1 Except as provided in §§ 3700.2 and 3705.1, no person or non-governmental entity shall remove a Special Tree without a Special Tree Removal Permit issued by the Urban Forestry Administration, as provided in the Act.

3700.2 Where the removal of a Hazardous Tree is necessary to avoid imminent harm or danger to persons or property, a person or non-governmental entity may remove a Hazardous Tree without a Special Tree Removal Permit; provided, the person or non-governmental entity shall submit to the Urban Forestry Administration, within fifteen (15) business days after removal of the Hazardous Tree, a permit application for a Special Tree Removal Permit together with a certification by an International Society of Arboriculture certified arborist that the Special Tree was a Hazardous Tree.

**3701 PERMIT APPLICATION PROCEDURES FOR A SPECIAL TREE
REMOVAL PERMIT**

3701.1 A permit application for a Special Tree Removal Permit shall be signed by the owner of the property on which the Special Tree is located and submitted to the Urban Forestry Administration on a form provided by the Urban Forestry Administration. The permit application shall be submitted at least fifteen (15) business days prior to the day that removal of the Special Tree is desired.

3701.2 In addition to such other information as the Urban Forestry Administration may request, the permit application for a Special Tree Removal Permit shall state the address of the property on which the Special Tree is located.

3701.3 If Special Tree removal is sought, in whole or in part, based upon a promise to plant replacement trees pursuant to § 3701.7(b), and the replacement trees will not be planted on the property where the Special Tree is located, the permit application shall contain the following:

- (a) The address of the Private Property where the replacement trees will be planted;
- (b) A statement, signed by the owner of the Private Property on which the replacement trees will be planted, on behalf of the present owners and all future owners of the Private Property, that upon issuance of the Special Tree Removal Permit, the owner of the Private Property on which the replacement trees are to be planted shall:
 - (1) Plant and maintain, or permit the permittee to plant and maintain, the replacement trees in accordance with §§ 3702.2(a) – (e);
 - (2) Allow an inspector of the Urban Forestry Administration reasonable access to the Private Property for twelve (12) months

following the planting of the replacement trees in accordance with § 3702.2(h);

- (3) Comply with all other applicable requirements of this chapter and the terms of the Special Tree Removal Permit, including, but not limited to, § 3702.2(f); and
- (4) Be subject to the imposition of fines, penalties, and fees for any violation of §§ 3701.3(b)(1)-(3).

3701.4 As part of the permit application for a Special Tree Removal Permit, the applicant shall agree to permit an arborist from the Urban Forestry Administration to inspect the proposed Special Tree removal site. The inspection shall occur during the Urban Forestry Administration's normal business hours and prior to issuance of a Special Tree Removal Permit.

3701.5 If an International Society of Arboriculture certified arborist or an Urban Forestry Administration arborist determines that the Special Tree to be removed is a Hazardous Tree or is a tree that has been identified pursuant to § 3701.9 as appropriate for removal, a Special Tree Removal Permit shall be issued. A Special Tree Removal Permit issued pursuant to this subsection shall not be suspended or revoked based upon a third party's allegation that the arborist certification was in error.

3701.6 If the applicant elects on the permit application to have an Urban Forestry Administration arborist make the determination set forth in § 3701.5 and the arborist fails to make a determination within forty (40) days after the permit application is submitted, a Special Tree Removal Permit shall be issued.

3701.7 If an International Society of Arboriculture certified arborist or an Urban Forestry Administration arborist determines that the tree to be removed is not a Hazardous Tree and is not a tree that has been identified in § 3701.9, or if the applicant stipulates as to both on the permit application, no Special Tree Removal Permit shall be issued until the applicant:

- (a) Pays into the Tree Fund a tree replacement fee equivalent to thirty-five dollars (\$35) per inch of circumference of each Special Tree that is to be removed;
- (b) Avers on the permit application for a Special Tree Removal Permit to plant, on Private Property located within the District, as identified on the permit application, and in accordance with §§ 3702.2(a)-(e), a quantity of saplings whose aggregated circumference equals or exceeds the circumference of the Special Tree(s) to be removed; or

- (c) A combination of (a) and (b) so as to account for the circumference of the Special Tree(s) removed.

3701.8 The authority to remove a Special Tree as granted by a Special Tree Removal Permit shall be valid for one hundred eighty (180) calendar days after the date of issuance of a Special Tree Removal Permit.

3701.9 Tree species appropriate for removal are:

- (a) *Ailanthus altissima* (common name-Ailanthus);
- (b) *Morus species* (common name-Mulberry); and
- (c) *Acer platanoides* (common name-Norway maple).

3702 PERMIT CONDITIONS FOR REPLACEMENT TREES

3702.1 The provisions of this section shall apply to any Special Tree Removal Permit issued, in whole or in part, upon the promise of the applicant for the Special Tree Removal Permit to plant replacement trees pursuant to § 3701.7(b).

3702.2 In addition to any other conditions imposed by the Urban Forestry Administration, the following conditions shall apply and be stated on the Special Tree Removal Permit:

- (a) Replacement trees, when planted, shall have a minimum caliper size of two (2) inches;
- (b) The replacement trees shall be properly planted according to the International Society of Arboriculture standards that are in effect at the time of planting;
- (c) The replacement trees shall be planted only during the planting season (October 15 to May 1), except that planting must be completed no later than seven (7) months after the Special Tree is removed, unless construction activity makes planting of replacement trees infeasible, in which case planting of replacement trees shall be completed no later than seven (7) months after construction is finished;
- (d) Replacement trees shall not be of a species listed in § 3701.9;
- (e) For a twelve (12) month period after planting, the replacement trees shall be watered, mulched, and, when appropriate, removed from any tree protection stakes and guy wires;

- (f) A non-hazardous replacement tree shall not be cut down, girdled, broken, or destroyed unless the replacement tree has grown into a Special Tree, and then only if a Special Tree Removal Permit has been issued.
- (g) Not later than thirty (30) days after the replacement trees are planted, the permittee shall mail or hand deliver to the Urban Forestry Administration a certification, signed by the permittee, attesting to the successful planting of the replacement trees; and
- (h) An inspector of the Urban Forestry Administration shall be granted reasonable access to the Private Property where the replacement trees are planted for a period of twelve (12) months following planting.

3702.3 If the replacement trees are not planted on the same property where the Special Tree is located:

- (a) The Special Tree Removal Permit shall include the information and statement provided by the permit application pursuant to § 3701.3(b); and
- (b) The permittee shall record the Special Tree Removal Permit in the land records of the District of Columbia against the Private Property on which the replacement trees are to be planted and mail or hand deliver confirmation of the recorded Special Tree Removal Permit to the Urban Forestry Administration no later than thirty (30) days after the Special Tree Removal Permit is issued, except that this requirement shall not apply where the Private Property is owned by or under the jurisdiction of the District of Columbia.

3702.4 Any Private Property may serve as the location on which a replacement tree may be planted pursuant to this section, regardless of whether that same tree is slated to be planted in accordance with plans approved by another District government agency, including plans approved as part of a campus plan, planned unit development, or historic preservation review process.

3703 ENFORCEMENT AND ADJUDICATION

3703.1 Notices of Infractions for violations of the Act, this chapter, or any condition of a Special Tree Removal Permit shall be issued, answered, and adjudicated pursuant to the Department of Consumer and Regulatory Affairs Civil Infraction Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.06 *et seq.*) and the provisions of Chapter 31 of Title 16 of the District of Columbia Municipal Regulations.

3704 SCHEDULE OF FINES

- 3704.1 Any person or non-governmental entity that violates any provision of the Act, this chapter, or any condition of a Special Tree Removal Permit shall be subject to a civil infraction fine of one hundred dollars (\$100) per inch of circumference of the tree or trees in question.

3705 PUBLIC UTILITIES

- 3705.1 Public utility companies regulated by the Public Service Commission may remove Special Trees in connection with utility construction, line maintenance, and emergency work within the District's right-of-way without a Special Tree Removal Permit. Such companies shall comply with the notice requirement set forth in section 105(b) of the Act (D.C. Official Code § 8-651.05(b)) and shall comply with ANSI(a)(300) standards.

3799 DEFINITIONS

- 3799.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed below:

Act – the Urban Forest Preservation Act of 2002, effective June 12, 2003 (D.C. Law 14-309; D.C. Official Code § 8-651.01 *et seq.*).

ANSI(a)(300) standards – the American National Standards Institute, Inc. American National Standard Specifications for Standards for Tree Care Operations; Tree, Shrub, and Other Woody Plant Maintenance - Standard Practices

Caliper – the diameter (width) of the trunk of a tree when measured at a height of six inches (6 in.) above the ground/soil.

Circumference – the linear distance around the trunk of a tree when measured at a height of four and one-half feet (4½ ft.) above the ground.

District's right-of-way – all the publicly owned property between the property line on a street, park, or other public property as such property lines are shown on the records of the District, and includes any roadway, tree space, sidewalk, or parking between such property lines.

Hazardous Tree – a Special Tree that should be removed because it is:

- (a) Structurally defective, diseased, dying, or dead;
- (b) Posing a high risk of failure or fracture with the potential to cause injury to people or damage to property: or

- (c) Causing damage to property or structures that cannot be mitigated in any manner other than removal of the tree.

Permittee – a person or non-governmental entity issued a Special Tree Removal Permit by the Urban Forestry Administration.

Person or non-governmental entity – any individual, corporation, firm, agency, association, organization, or utility company.

Private Property – real property, including real property owned or under the jurisdiction of the District of Columbia and real property that is to be developed pursuant to an approved campus plan, planned unit development, or a historic preservation review. This term does not include the District's right-of-way.

Remove – cutting down, topping, girdling, breaking, or destroying a Special Tree.

Replacement tree – A tree planted pursuant to § 3701.7(b).

Special Tree – a tree within the District of Columbia that has a minimum circumference of fifty-five inches (55 in.).

Tree Fund – the fund established under section 107 of the Urban Forest Preservation Act of 2002, effective June 12, 2003 (D.C. Law 14-309; D.C. Official Code § 8-651.07).