

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under section 302(14) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), Mayor's Order 98-140, dated August 20, 1998, section 202(b) of the Medical Malpractice Amendment Act of 2006 (Amendment Act), effective March 14, 2007 (D.C. Law 16-263; D.C. Official Code § 7-161(b)), and Mayor's Order 2008-25, dated February 8, 2008, hereby gives notice of the intent to take final rulemaking action to adopt the following amendments to Chapter 40 of Title 17 of the District of Columbia Municipal Regulations (DCMR). No comments were received as a result of the publication of the rules and no changes have been made to the text of the proposed rules, as published with the Notice of Proposed Rulemaking in the *D.C. Register* on April 18, 2008, at 55 DCR 004383. These final rules will be effective upon publication of this notice in the *D.C. Register*.

Chapter 40 (Health Occupations: General Rules) of Title 17 DCMR (Business, Occupations & Professions) is amended as follows:

A new section 4017 is added to read as follows:

4017 REPORTING REQUIREMENTS

- 4017.1 Any health care provider that employs a physician who is licensed in the District of Columbia shall report the following to the Board of Medicine within ten (10) days:
- (a) Any disciplinary action that is taken against the physician by the health care provider; and
 - (b) The resignation of any physician that occurs while the physician is being investigated by the health care provider.
- 4017.2 The Board of Medicine shall impose a penalty not to exceed two thousand five hundred dollars (\$2,500.00) on a physician who employs a physician and who fails to comply with the provisions of § 4017.1.
- 4017.3 The Board of Medicine shall refer to the appropriate board or to the System Administrator for appropriate action non-physician health care providers who fail to report the discipline of physicians or the resignation of physicians while under investigation pursuant to § 4017.1, or who do so more than ten (10) days after the discipline is imposed or the resignation occurs.

- 4017.4 Health care providers and medical facilities providing services in the District of Columbia shall submit biannual adverse event reports, on January 1 and July 1 of each calendar year, to the System Administrator.
- 4017.5 Each adverse event report shall:
- (a) Be reported using the form approved by the Board of Medicine and available on the Department's Health Regulation and Licensing Administration (HRLA) website;
 - (b) Ensure that the patient's identity shall be de-identified and anonymous. For each adverse event reported, the reporting health care provider or medical facility shall use a numeric internal event identifier that will allow the System Administrator to subpoena health records and conduct investigations when needed; and
 - (c) Include a corrective action plan designed to prevent future similar adverse events.
- 4017.6 Individual health care providers shall not be required to report adverse events occurring in medical facilities in which they have privileges or in which they are employed or provide contracted services unless they own the medical facility.
- 4017.7 Medical facilities shall report adverse events to the System Administrator that occur in the facility or as a result of the service.
- 4017.8 The appropriate board or the Office of Administrative Hearings (OAH) shall adjudicate contested cases for failing to timely file adverse event reports.
- 4017.9 The appropriate board, the System Administrator, or OAH shall impose a penalty of not less than five hundred dollars (\$500.00) or more than two thousand five hundred dollars (\$2,500.00) for failure to submit a timely adverse event report.
- 4017.10 The System Administrator shall be responsible for:
- (a) Investigating adverse events as needed, including the subpoenaing of de-identified and anonymous primary health records;
 - (b) Collecting, organizing, and storing data on adverse events occurring in the District of Columbia;
 - (c) Tracking, assessing, and analyzing the incoming reports, findings, and corrective action plans;

- (d) Identifying common adverse event patterns or trends;
- (e) Recommending methods to reduce systematic adverse events;
- (f) Providing technical assistance to health care providers and medical facilities on the development and implementation of patient safety plans to prevent adverse events;
- (g) Disseminating information and advising health care providers and medical facilities in the District of Columbia on medical best practices;
- (h) Monitoring national trends in best practices and disseminating relevant information and advice to health care providers and medical facilities in the District of Columbia; and
- (i) Publishing an annual report that includes summary data of the number and types of adverse events for the prior calendar year by type of healthcare provider and medical facility, rates of change per type of event, other analyses, and recommendations to improve health care delivery in the District of Columbia.

4017.11 Information provided to or obtained by the System Administrator pursuant to §§ 4017.4 and 4017.5, including the identity of persons providing such information and the reports or documents provided pursuant to § 4016.5, as well as files, records, findings, opinions, recommendations, evaluations, and reports of the System Administrator, shall be confidential and shall not be subject to disclosure pursuant to any other provision of law, and shall not be discoverable or admissible into evidence in any civil, criminal, or legislative proceeding. The information shall not be disclosed by any person under any circumstances, except as such data in the aggregate may be published in the annual report by the System Administrator.

4017.12 No person providing information to the System Administrator shall be compelled to testify in any civil, criminal, or legislative proceeding with respect to any confidential matter contained in the information provided to the System Administrator, except the System Administrator may provide information in a criminal proceeding in which an individual is accused of a felony, if ordered to do so by a court pursuant to D.C. Official Code § 7-161(e)(3).

4017.13 Information gathered by the System Administrator on adverse events pursuant to this section shall not be used for purposes other than as set forth in § 4017.10.

4017.14 Information submitted by health care providers and medical facilities pursuant to this section shall not be shared with the Healthcare Facilities

Division (HFD) of the HRLA.

- 4017.15 Medical facilities and individual health care providers are subject to investigation by the System Administrator, in addition to investigations pursuant to §§ 4017.5(b) and 4017.10(a), for a failure to file an adverse event report in a timely manner.
- 4017.16 When information on an adverse event comes to the System Administrator by other means, such as by complaint or by regular processes performed by the HFD, such information may be used by HFD to initiate an investigation for purposes of regulatory compliance unrelated to the reporting of adverse events pursuant to D.C. Official Code § 7-161.

Section 4099 is amended to read as follows:

4099 DEFINITIONS

- 4099.1 As used in this chapter, the following terms and phrases shall have the meanings ascribed:

Act – the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201.01 *et seq.*).

Adverse event – an event, occurrence, or situation involving the medical care of a patient by a health care provider that results in death or an unanticipated injury to the patient, as designated by the Board of Medicine and available on the Department’s Health Regulation and Licensing Administration website.

Board – the Board of Acupuncture, Board of Chiropractic, Board of Dentistry, Board of Dietetics and Nutrition, Board of Marriage and Family Therapy, Board of Massage Therapy, Board of Medicine, Board of Nursing, Board of Nursing Home Administration, Board of Occupational Therapy, Board of Optometry, Board of Pharmacy, Board of Physical Therapy, Board of Podiatry, Board of Professional Counseling, Board of Psychology, Board of Podiatry, Board of Respiratory Care, or Board of Social Work established by the Act, as the context requires.

Certificate – a certificate to practice a specialty of health occupation issued by a board pursuant to this subtitle or the Act.

Day – a calendar day.

Department – the Department of Health.

Director – the Director of the Department of Health, or the Director’s designee.

Disciplinary action – an action taken by a health care provider that limits or revokes the privileges of a physician to practice medicine at any medical facility of that provider or that results in the termination of the physician’s employment or other contractual relationship with the provider due to substandard quality of clinical practice, unprofessional behavior, or substance abuse.

Employs – the action of a health care provider to enter into an employment or other contractual relationship with a physician to practice medicine or to grant a physician privileges to practice medicine at any medical facility of that provider.

Health care provider - an individual or entity licensed or otherwise authorized under District law to provide healthcare service, including a hospital, nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, renal dialysis facility, ambulatory surgical center, pharmacy, physician or health care practitioner’s office, long-term care facility, behavior health residential treatment facility, health clinic, clinical laboratory, health center, physician, physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, psychologist, certified social worker, registered dietitian or nutrition professional, physical or occupational therapist, pharmacist, or other individual health care practitioner.

Legal holiday – one of the following holidays:

- (a) New Year’s Day;
- (b) Martin Luther King, Jr.’s Birthday;
- (c) Washington’s Birthday;
- (d) Memorial Day;
- (e) Independence Day;
- (f) Labor Day;
- (g) Columbus Day;
- (h) Veterans Day;

- (i) Thanksgiving Day;
- (j) Christmas Day; or
- (k) Any other day designated as a legal holiday by the president, the Congress, the Mayor of the Council of the District of Columbia, on the actual day the legal holiday is celebrated by the government of the District of Columbia.

License – a license to practice a health occupation issued by a board pursuant to this chapter or the Act.

Medical facility – a hospital, nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, renal dialysis facility, ambulatory surgical center, pharmacy, physician or health care practitioner’s office, long-term care facility, behavior health residential treatment facility, health clinic, clinical laboratory, or health center.

Primary health record – the record of continuing care maintained by a health professional, group practice, or health care facility or agency containing all diagnostic and therapeutic services rendered to an individual patient by the health professional, group practice, or health care facility, or agency.

Registration – a registration required to practice a health occupation issued pursuant to this chapter or the Act.

System Administrator – the Senior Deputy of the Department’s Health Regulation and Licensing Administration, or such other individual as designated by the Director.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF FINAL RULEMAKING

The Director of the Department of Housing and Community Development hereby gives notice the adoption of new chapter 46 of Title 10 DCMR, entitled "ACQUISITION OF ABANDONED AND DETERIORATED PROPERTY", pursuant to the authority set forth in Section 1101 of the Housing Act of 2002, effective April 19, 2002, D.C. Law 14-114, D.C. Official Code § 42-3171.01 (2006 Supp.) (Act) and Mayor's Order 2007-209, effective September 27, 2007. Final action to adopt these rules was taken on April 28, 2008. The Department of Housing and Community Development hereby gives notice that the amendment will add a new Chapter 46, Acquisition of Abandoned and Deteriorated Properties, which will provide criteria for the Director's determination of "deteriorated property" under the Act. Notice of the Proposed Rulemaking was published in the D.C. Register on February 15, 2008 at 50 DCR 1576. These final rules will be effective upon publication of this notice in the D.C. Register.

Title 10 of the DCMR is amended to add the following new chapter:

**CHAPTER 46 ACQUISITION OF ABANDONED AND
DETERIORATED PROPERTY****4600 GENERAL PROVISIONS**

4600.1 The Purpose of this chapter is to provide criteria to be considered in identifying "deteriorated property" that constitutes a threat to the public health, safety, or welfare or that contributes to the blight or dilapidation of the area immediately surrounding the subject property pursuant to D.C. Official Code § 42-3171.01(2) (2006 Supp.).

**4601 REAL PROPERTY THAT CONSTITUTES A THREAT TO THE
PUBLIC HEALTH, SAFETY, OR WELFARE**

4601.1 In accordance with D.C. Official Code § 42-3171.01(2)(a), property constitutes a threat to the public health, safety, or welfare if conditions on the property meet at least two (2) of the following criteria:

- (a) If the property contains a structure, the structure shows signs of disrepair that threaten surrounding properties, structures, systems, or persons, as evidenced by an absent, dilapidated, or partial roof, dilapidated or partial floors or exterior walls, visible structural defects, conditions that may

expose the structure to the elements, or any other condition that evidences the structure is not maintained;

- (b) If the property contains a structure, the structure fails to provide for necessary ventilation, light, sanitation, or drainage, as evidenced by inadequate or inoperable electrical wiring or plumbing, standing water, boarded or blocked doors or windows, or unconnected public utilities;
- (c) If the property contains a structure, conditions on the property that violate the fire, building, or housing codes;
- (d) Conditions on the property that present a threat of disease transmission or ill health, as evidenced by an environment conducive to the harborage of vermin or vectors, including the existence of abandoned cars, garbage, standing water, or excessive vegetation, or criminal acts on the property, as evidenced by drug usage or other illicit activities;
- (e) Evidence of trash dumping, which includes the existence of abandoned automobiles, automobile parts, appliances, furniture, household items, clothing, household garbage, yard debris, or any other discarded items; or
- (f) The property is located within a crime reduction target area; or
- (g) The existence of any other condition that constitutes a threat to the public health, safety, or welfare, as determined by the Director.

4602**REAL PROPERTY THAT CONTRIBUTES TO THE BLIGHT
OR DILAPIDATION OF THE AREA IMMEDIATELY
SURROUNDING THE PROPERTY**

4602.1

In accordance with D.C. Official Code § 42-3171.01(2)(b), property contributes to the blight or dilapidation of the area immediately surrounding the property if the conditions on the property meet at least two (2) of the following criteria:

- (a) If the property contains a structure, the structure shows signs of disrepair, which may be evidenced by a neglected exterior including, but not limited to, chipping or flaking paint, rotting wood, crumbling brick or other stone, missing or broken doors or windows, graffiti, or unsecured entrances or openings;
- (b) The property comprises an irregular sized or shaped lot, which renders the property unusable for its intended purpose;
- (c) A vacant lot for which the perimeter is not secured by an upright fence or other barrier that limits access to the lot;

- (d) The property exhibits a pattern of neglect, as evidenced by the following:
- (1) More than two (2) recorded housing code violations within a two (2) year period, regardless of whether the violation was paid or abated;
 - (2) More than two (2) citations issued by the District of Columbia Department of Public Works within a two (2) year period, regardless of whether the citation was paid or abated;
 - (3) Delinquent real property taxes or other assessments that result in the property being eligible to be sold at the real estate tax sale two (2) or more times, regardless of whether redeemed or paid; or
 - (4) Combination of two or more recorded housing code violations, citations issued by the Department of Public Works, or delinquent real property taxes or other assessments that result in the property being eligible to be sold at the real estate tax sale, regardless of whether abated, redeemed, or paid;
- (e) The property's title contains an irregular ownership history or encumbrance that renders the title unmarketable;
- (f) The existence of any other condition that may contribute to the blight or dilapidation of the area immediately surrounding the property, as determined by the Director.

D.C. DEPARTMENT OF HUMAN RESOURCES**NOTICE OF FINAL RULEMAKING**

The Director, D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with section 1106 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 § 1-611.06) (2006 Repl.), and Council Proposed Resolution 17-649 (deemed approved on April 15, 2008), hereby gives notice that final rulemaking action was taken to adopt the following rules. These rules amend Chapter 11, Classification and Compensation, of Title 6 of the District of Columbia Municipal Regulations (DCMR), for the main purpose of adding language to the rules relating to compensation system changes approved in 2004, 2005, 2006, and 2007 establishing open range salary schedules for Senior Executive Attorney Service (SEAS) positions within the Legal Service and non-SEAS management positions in the Legal Service, all Excepted Service positions, Management Supervisory Service white collar positions; and Career Service non-union white collar positions at grade levels 15/16 and 16/17. As a result of these compensation system changes, the following open range schedules were established: *Excepted Service Pay Schedule ("ES Schedule")*; *Legal Service Management Salary Schedule ("LX Schedule")*; *Management Supervisory Service Pay Schedule ("MS Schedule")*; and an *Open Range Salary Schedule for Career Service non-union white collar positions at grade levels 15/16 and 16/17, part of the Non-Union General Career Service Salary Schedule*. The changes to the rules resulting from the establishment of the open range schedules are mainly contained in section 1126 of the chapter. In addition to the amendments resulting from the establishment of the open range salary schedules, amendments were made to sections 1124, 1125, 1128, 1130, 1131, and 1199 of the chapter. Finally, section 1139.5 of the chapter was amended to provide that while exempt time off granted shall not exceed eighty (80) hours in any 12-month consecutive period, the personnel authority may approve a maximum of one hundred twenty (120) hours of exempt time off for eligible employees who are required to perform work in excess of eighty (80) hours in a pay period because of certain emergencies or other unforeseen circumstances or situations. No comments were received and no changes were made under the notice of proposed rulemaking published on December 14, 2007 (54 DCR 12025). Final rulemaking action was taken on May 23, 2008.

CHAPTER 11**CLASSIFICATION AND COMPENSATION**

Chapter 11 of the D.C. Personnel Regulations is amended as follows:

Sections 1124.1 and 1124.4 are amended to read as follows:

- 1124.1 (a) The Director, D.C. Department of Human Resources (DCHR), annually may recommend Career, Legal, Excepted, and Management Supervisory Services

compensation system changes and adjustments to the Mayor for review. These recommendations shall be based on the criteria established under section 1103 of the CMPA (D.C. Official Code § 1-611.03) (2006).

- (b) To the extent that any recommended compensation system changes may affect or ultimately be applicable to Career, Legal, Excepted, and Management Supervisory Services employees in certain independent agencies, the Director, DCHR, shall consult with such independent authorities before making any recommendations to the Mayor.

1124.4 Pursuant to section 1105 (d) of the CMPA (D.C. Official Code § 1-611.05 (d)) (2006), the Mayor shall submit any proposed compensation system changes and adjustments, including employee salary and rate schedules and their proposed effective date(s), to the Council. The submission to the Council shall specify to which agencies, subordinate or independent, the proposed changes shall apply, as well as exclusions, if any.

A new section 1124.16 is added to read as follows:

- 1124.16 (a) Whenever a compensation system change or adjustment alters the manner in which employees covered under a salary or rate schedule are to be paid or results in the creation of a new salary or rate schedule that alters the manner in which employees covered under the schedule are to be paid, the submission to the Council shall include an explanation of the changes and how employees shall be paid.
- (b) Immediately upon Council approval of compensation system changes as described in section 1124.16 (a) above, the personnel authority shall:
- (1) Issue procedures, in writing, for the implementation of the new salary or rate schedule, initial placement of employees on the schedule, and advancement; and
 - (2) Inform affected employees of the procedures.

Section 1125 is amended to read as follows:

1125 PAY SYSTEMS

1125.1 The following pay systems shall apply to all employees appointed under the Career, Legal, Excepted, or Management Supervisory Services:

- (a) District Service Salary System; and
- (b) Wage Service Rate System.

1125.2 The District Service salary schedules are the annual rate schedules applicable to employees who are paid under the District Service Salary System, which is the basic

pay system for positions that are classified in accordance with section 1101 of this chapter and for which compensation is established on an annual basis. The District Service Salary System includes the following schedules:

- (a) Career Service salary schedules (union), the symbol for which is CS;
- (b) Career Service salary schedules (non-union), the symbol for which is CS;
- (c) Legal Service salary schedules (non-union and union), the symbols for which are LX (Senior Executive Attorney Service (SEAS) positions and non-SEAS management positions), and LS, respectively;
- (d) The Excepted Service salary schedule (ES Schedule), the symbol for which is ES; and
- (e) The Management Supervisory Service Pay schedule (MS Schedule), the symbol for which is MS.

1125.3 The Wage Service rate schedules are the hourly rate schedules applicable to employees who are paid under the Wage Service Rate System, which is the basic pay system for positions that are classified in accordance with section 1105 of this chapter and for which compensation is established on an hourly basis. The Wage Service Rate System includes the following schedules:

- (a) The Wage Service Rate Schedule (union), with the rates of pay for the following positions:
 - (1) Regular Non-Supervisory positions, the symbol for which is RW; and
 - (2) Leader positions, the symbol for which is LW.
- (b) The Wage Service Rate Schedule (non-union) with the rates of pay for the following positions:
 - (1) Regular Non-Supervisory positions, the symbol for which is RW;
 - (2) Leader positions, the symbol for which is LW;
 - (3) Supervisory positions, the symbol for which is SW; and
 - (4) Management Supervisory Service positions, the symbol for which is MW.

Section 1126 is amended as follows:

1126 DISTRICT SERVICE SALARY SYSTEM—GENERAL PROVISIONS

Sections 1126.1 through 1126.6 are amended to read as follows:

- 1126.1 This section applies to all employees in the Career, Legal, Excepted, and Management Supervisory Services, as applicable, paid under any of the District Service salary schedules listed in section 1125.2 of this chapter.
- 1126.2 The District Service salary schedules listed in section 1125.2 of this chapter are the basic pay schedules applicable to employees who are paid under the District Service Salary System.
- 1126.3 As applicable, the District Service salary schedules shall be comprised of:
- (a) Grades and steps consisting of annual salaries within each grade; or
 - (b) Pay or Grade levels with a minimum, midpoint, and maximum annual salary range within each pay level.
- 1126.4 When payment is made on an hourly, daily, weekly, or biweekly rate, the rate shall be computed from the appropriate annual rate of basic pay of a District Service salary schedule and in accordance with the rules prescribed in section 1131 of this chapter.
- 1126.5 Except as provided in sections 1126.6 through 1126.11, 1126.21, 1126.22, 1126.29, and 1126.30 of this chapter, a new appointment shall be made at the minimum rate of the grade or pay level.
- 1126.6 At the discretion of the agency head, an initial or first (1st) appointment with the District government to a Career Service position under a CS salary schedule with steps may be made at any step up to the representative rate of the appropriate grade on a CS salary schedule, as applicable.

Section 1126.7 is amended to read as follows:

- 1126.7 The pay-setting rules listed in the chart below shall apply to all initial or first (1st) appointments with the District government, promotions, change to lower grade actions, and reassignments to positions in the Excepted Service or Management Supervisory Service (MSS) paid from the ES Schedule or MS Schedule:

TYPE OF APPOINTMENT	PAY-SETTING RULE
<p>Initial or First (1st) Appointment with the District government</p>	<p>(a) The employing agency may set the initial rate of pay at any amount up to the midpoint range of the grade or pay level for the position. The following factors should be considered when setting the pay at an amount up to the midpoint range:</p> <ul style="list-style-type: none"> (1) Selectee’s current salary; (2) Skills set the selectee brings to the job in addition to the minimum qualifications for the position; (3) Effect on agency and budget limitations; (4) Market value of the position; and (5) Internal compensation relationships. <p>(b) For extraordinary cases, the employing agency shall request approval from the personnel authority to set the initial rate of pay at an amount above the midpoint range of the grade or pay level for the position. The personnel authority shall establish the criteria for the request, which shall be made in writing by the employing agency.</p>
<p>Promotion (including Temporary Promotion)</p>	<p>The rate of pay of an employee promoted within or to an open range salary schedule shall be set by adding 10% to the employee’s current rate of basic pay. Any deviation is subject to approval by the personnel authority.</p>
<p>Change to Lower Grade (Demotion) [Non-Disciplinary/Performance Reasons]</p>	<p>There shall be no change to the rate of pay of an employee upon a change to lower grade for non-disciplinary reasons; provided that the employee’s current salary is within the range of pay for the new (lower) grade or pay level. If the employee’s current rate of pay is over or at the maximum rate for the new (lower) grade or pay level, the rate of pay shall be set at the maximum rate for the new (lower) grade or pay level.</p>

TYPE OF APPOINTMENT	PAY-SETTING RULE
<p>Change to Lower Grade (Demotion) [Disciplinary/Performance Reasons]</p>	<p>The rate of pay of an employee who is changed to a position at a lower grade due to discipline or performance reasons shall be set at an amount ten percent (10%) lower than the employee’s rate of pay at the higher-graded position; provided that the rate of pay shall not be set at an amount lower than the minimum nor higher than the maximum rate for the lower-graded position.</p>
<p>Reassignment</p>	<p>There shall be no change to the rate of pay of an employee upon reassignment action.</p>

Section 1126.8 is amended to read as follows:

1126.8 The provisions of section 1126.7 of this section shall apply to all initial or first (1st) appointments with the District government, promotions, change to lower grade actions, and reassignments to non-union Career Service to non-union white collar positions at grade levels 15/16 and 16/17.

Sections 1126.9 and 1126.10 are amended to read as follows:

1126.9 An appointment to a Career Service position under a CS salary schedule with steps, whether the initial or first (1st) appointment with the District government or a reemployment appointment, may be made at a rate above the representative rate of the appropriate grade on the CS salary schedule on the basis of superior qualifications, as provided in sections 1126.10 through 1126.12 of this section.

1126.10 Upon the approval of the personnel authority, initial appointments with the District government to Career Service positions at grade level 7 and above on a CS salary schedule may be made on the basis of superior qualifications of the candidate.

1126.11 A superior qualifications appointment shall be based on all of the following criteria:

- (a) The special needs of the agency for the candidate’s services;
- (b) The candidate’s unusually high or unique qualifications for the position; and
- (c) The candidate’s rate of basic pay.

Sections 1126.12 and 1126.13 are amended to read as follows:

- 1126.12 When a superior qualifications appointment is made by reemployment, the candidate must have a break in service of at least ninety (90) calendar days since his or her last period of District government service.

Sections 1126.13 and 1126.14 are amended to read as follows:

- 1126.13 At the discretion of the agency head, the rate of basic pay of an employee in the Management Supervisory Service (MSS) with Career Service status who moves to the Career Service without a break in service of more than three (3) months to a position under a CS salary schedule with steps, may be set at any rate of the appropriate grade on the CS salary schedule that does not exceed the employee's existing rate of basic pay on the MS Schedule (open ranges) or MW rate schedule, except that the rate of basic pay on the CS salary schedule shall not be set below the rate of basic pay that the employee would have attained in the Career Service had the MSS appointment never been effected.
- 1126.14 At the discretion of the agency head, the rate of basic pay of an employee in the Management Supervisory Service without Career Service status who moves to the Career Service without a break in service to a position under a CS salary schedule with steps, may be set at the minimum rate of the appropriate grade on the CS salary schedule or at any rate above the minimum rate that does not exceed the employee's existing rate of basic pay on the MS Schedule (open ranges) or MW rate schedule.

Section 1126.15 is deleted.

Section 1126.16 is renumbered as 1126.15 and amended to read as follows:

- 1126.15 When an employee moves without a break in service from an Excepted Service position under the ES Schedule to a lower or equivalent grade in a Career Service position under a CS salary schedule with steps, the rate of basic pay on the CS salary schedule shall be set at any step of the grade that does not exceed the employee's highest previous rate. If the employee's rate of basic pay exceeds the rate of pay for the grade on the CS schedule, the rate of basic pay shall be set at the highest step of the grade.

Sections 1126.17 and 1126.18 are deleted.

Sections 1126.19 through 1126.22 are renumbered as 1126.16 through 1126.19 and amended to read as follows:

- 1126.16 In accordance with the provisions of section 1126.17 of this section, an agency may make a special adjustment in the rate of basic pay of a supervisor in a Career Service position paid under a salary schedule with steps when both of the following are true:
- (a) The supervisor regularly has responsibility for supervision (which must include supervision over the technical aspects of the work concerned) over one (1) or more employees subject to the Wage Service Rate System; and

- (b) The rate of basic pay for the supervisor is less than the highest rate of basic pay for any Wage Service employee he or she supervises.
- 1126.17 When an agency decides to adjust the rate of basic pay for a supervisor as provided in section 1126.16 of this section, the rate of basic pay shall be adjusted to the nearest step, but not above the maximum step, of his or her grade that exceeds the highest rate of basic pay for any Wage Service employee for whom the supervisor regularly has responsibility for supervision.
- 1126.18 The adjustment of a supervisor's rate of basic pay in accordance with sections 1126.16 and 1126.17 of this section shall become effective on the first (1st) day of the first (1st) biweekly pay period following the date on which the agency determines to make the adjustment.
- 1126.19 Neither a retained rate nor any form of premium pay shall be considered part of an employee's rate of basic pay in making determinations relative to pay adjustments effected in accordance with sections 1126.16 through 1126.18 of this section.

New sections 1126.20 and 1126.21 are added to read as follows:

- 1126.20 At the discretion of the personnel authority in the case of an independent agency as defined in Chapter 36 of these regulations, or at the discretion of the Attorney General for the District of Columbia (Attorney General) in the case of the Office of the Attorney General for the District of Columbia (OAG), as applicable, a new appointment in the Legal Service to a position paid from a LS salary schedule may be made at any step on the appropriate LS salary schedule.
- 1126.21 At the discretion of the Attorney General (in the case of the OAG), a new appointment in the Legal Service to a SEAS position and a non-SEAS management position may be made at any rate of the appropriate pay level on the schedule as specified in sections 1126.22 through 1126.26 of this section.

Sections 1126.23 through 1126.25 are deleted.

Sections 1126.26 through 1126.30 are renumbered as 1126.22 through 1126.26, respectively; and amended to read as follows:

- 1126.22 New appointments to OAG section chief and assistant section chief positions shall be made at the lowest pay level on the LX Schedule. New appointments to OAG deputy and assistant deputy positions shall be made at the next highest pay level on the LX Schedule. New appointments to OAG chief deputy positions shall be made at the highest pay level on the LX Schedule.
- 1126.23 The Attorney General shall designate the appropriate starting salary for covered employees within the salary range for the pay level occupied on the LX Schedule for each deputy, assistant deputy, section chief, assistant section chief, general counsel who perform work for a subordinate agency other than the OAG, or any other attorney to be paid from the LX Schedule, as appropriate, based upon criteria which shall include but not be limited to the following:

- (a) Number of employees supervised;
 - (b) Complexity of the duties and responsibilities;
 - (c) Experience and skills; and
 - (d) Job performance.
- 1126.24 The Attorney General, at his or her sole discretion and using the criteria set forth in section 1126.23 of this section, may change the salary of covered employees at any time to any other salary within the salary range for the level occupied.
- 1126.25 The salary of covered employees who are temporarily assigned to positions at a higher or lower level in the LX Schedule shall be set, at the discretion of the Attorney General, at any salary within the salary range of the level to which the employees are temporarily assigned or at a salary within the salary range of the level of the employees' regular position.
- 1126.26 The salary of non-covered employees who are temporarily assigned to covered positions shall be set at the pay level within the LX Schedule designated for the covered positions pursuant to sections 1126.22 and 1126.23 of this section at any salary within the salary range of the level to which the employees are temporarily assigned. Upon termination of the temporary assignments, the employees shall return to the non-covered positions and salaries they occupied prior to the temporary assignments.

Section 1126.31 is renumbered as 1126.27 and amended to read as follows:

- 1126.27 Persons paid from a LX salary schedule shall not receive overtime pay.

Section 1126.32 is deleted.

New sections 1126.28 and 1126.29 are added to read as follows:

- 1126.28 At the discretion of the personnel authority in the case of an independent agency as defined in Chapter 36 of these regulations, a new appointment in the Legal Service to a position paid from a LX salary schedule may be made at any rate of the appropriate pay level on the schedule.
- 1126.29 An independent personnel authority that employs Legal Service attorneys in SEAS and non-SEAS management positions shall:
- (a) Issue pay-setting procedures, in writing, for new appointments that include the same or similar factors listed in sections 1126.22 through 1126.26 of this section; and
 - (b) Inform affected employees of the pay-setting procedures.

Section 1128 is amended as follows:

1128 WAGE SERVICE RATE SYSTEM—GENERAL PROVISIONS

Sections 1128.1 and 1128.2 are amended to read as follows:

- 1128.1 This section applies to all Career and Management Supervisory Service employees paid under a Wage Service rate schedule.
- 1128.2 The Wage Service rate schedules listed in section 1125.3 of this chapter are the hourly rate schedules applicable to employees who are paid from the Wage Service Rate System.
- 1128.3 The Wage Service rate schedules shall be comprised of grades and steps consisting of hourly rates within each grade.

Sections 1128.4 through 1126.6 are amended to read as follows:

- 1128.4 Except as provided in sections 1128.5 through 1128.8 of this section, a new appointment shall be made at the minimum rate of the grade.
- 1128.5 At the discretion of the agency head (or designee), an individual may be appointed at any step up to the representative rate of the appropriate grade on an applicable Wage Service rate schedule.
- 1128.6 An individual may be appointed at a rate above the representative rate of the appropriate grade on the basis of superior qualifications, as provided in sections 1128.7 and 1128.8 of this section.
- 1128.7 A superior qualifications appointment may be made only with the approval of the personnel authority.
- 1128.8 A superior qualifications appointment shall be based on all of the following criteria:
- (a) The special needs of the agency for the candidate's services;
 - (b) The candidate's skills and experience are of an exceptional or highly specialized nature in his or her trade or craft; and
 - (c) The candidate's rate of basic pay.

Sections 1128.9 through 1128.15 are amended to read as follows:

- 1128.9 When a superior qualifications appointment is made by reemployment, the candidate must have a break in service of at least ninety (90) calendar days since his or her last period of District government service.
- 1128.10 At the discretion of the agency head, the rate of basic pay of an employee in the Management Supervisory Service (MSS) with Career Service status who is paid

under the MW rate schedule and moves to a Career Service wage position without a break in service of more than three (3) months may be set at any rate of the appropriate grade on the RW, LW, or SW rate schedule that does not exceed the employee's existing rate of basic pay on a MW rate schedule, except that the rate of basic pay on the RW, LW, or SW rate schedule shall not be set below the rate of basic pay that the employee would have attained in the Career Service had the MSS appointment never been effected.

- 1128.11 At the discretion of the agency head, the rate of basic pay of an employee in the MSS without Career Service status who is paid under the MW rate schedule and moves to a Career Service wage position without a break in service may be set at the minimum rate of the appropriate grade on the RW, LW, or SW rate schedule or at any rate above the minimum rate that does not exceed the employee's existing rate of basic pay on a MW rate schedule.
- 1128.12 When an employee moves without a break in service from a position paid under a Wage Service Rate System schedule to a position paid under another Wage Service Rate System Schedule (i.e., movement within the same rate schedule, and movement from a rate schedule to a different rate schedule), the rate of pay shall be determined under one (1) of the following, as appropriate:
- (a) If one hundred one percent (101%) of the representative rate, as defined in sections 1131.11 and 1199 of this chapter, of the employee's grade on the Wage Service Rate System schedule is less than the representative rate of the grade to which he or she is being assigned, the movement constitutes a promotion, and, the employee shall be entitled to one (1) of the following:
- (1) Basic pay at the lowest rate of the grade on the rate schedule that is equivalent to his or her existing rate of basic pay, plus two (2) step increases of the current grade on a Wage Service Rate System Schedule;
 - (2) If the rate determined in (1) above falls between two (2) rates of the new grade, he or she shall be entitled to the higher rate; or
 - (3) If the rate determined in (1) above is higher than any rate of the new grade, he or she shall be entitled to the maximum rate of the new grade.
- (b) If one hundred one percent (101%) of the representative rate, as defined in sections 1131.11 and 1199 of this chapter, of the employee's grade on the Wage Service Rate System schedule is equal to or more than the representative rate of the grade to which he or she is being assigned on the MW rate schedule, the movement constitutes either a reassignment (when "equal to") or a change to lower grade (when "more than"), and the agency may pay the employee in accordance with either of the following:
- (1) The agency may pay the employee at any rate of the grade on the MW rate schedule that does not exceed his or her highest previous rate on a Wage Service Rate System schedule; or

- (2) If the employee's highest previous rate on a Wage Service Rate System schedule falls between two (2) rates of the new grade, the agency may pay the employee at the higher rate.
- 1128.13 When an employee moves without a break in service from a Career Service position under the CS salary schedule to a Management Supervisory Service position under the MW rate schedule, the rate of basic pay on the MW rate schedule shall be determined under the provisions of section 1126.15 of this chapter, reading "MS salary" as "MW rate."
- 1128.14 When an employee moves without a break in service from a Management Supervisory Service (MSS) position under the MS salary schedule to a MSS position under a MW rate schedule, the rate of pay on the MW rate schedule shall be determined under the provisions of section 1130.3 of this chapter, using the employee's MS salary schedule as the "current schedule" and the MW rate schedule as the "new schedule."
- 1128.15 When any action moves an employee from one MW rate schedule ("current" schedule) to another grade within the same rate schedule or to any grade within another MW rate schedule ("new" schedule), the rate of pay on the new schedule shall be determined under one (1) of the following, as appropriate:
- (a) If one hundred one percent (101%) of the representative rate, as defined in sections 1131.11 and 1199 of this chapter, of the employee's grade in his or her current schedule is less than the representative rate of the grade to which he or she is being assigned in either the same schedule or a new schedule, the employee shall be entitled to one (1) of the following:
- (1) Basic pay at the lowest rate of the new grade that is equivalent to his or her existing rate of basic pay plus one (1) step increase of the current grade;
 - (2) If the rate determined in (1) above falls between two (2) rates of the new grade, he or she shall be entitled to the higher rate; or
 - (3) If the rate determined in (1) above is higher than any rate of the new grade, he or she shall be entitled to the maximum rate of the new grade.
- (b) If one hundred one percent (101%) of the representative rate, as defined in sections 1131.11 and 1199 of this chapter, of the employee's grade in his or her current schedule is equal to or more than the representative rate of the grade to which he or she is being assigned in either the same schedule or a new schedule, the agency may pay the employee in accordance with either of the following:
- (1) The agency may pay the employee at any rate of the new grade that does not exceed his or her highest previous rate; or

- (2) If the employee's highest previous rate falls between two (2) rates of the new grade, the agency may pay the employee at the higher rate.

Section 1130 is amended to read as follows:

1130 CAREER SERVICE POSITION CHANGES—SETTING PAY

- 1130.1 Except as may be provided elsewhere in this chapter, this section shall be used to determine the appropriate rate of basic pay upon either of the following:
- (a) Reinstatement to or a promotion in a position in the Career Service paid under a salary or rate schedule with steps;
 - (b) Movement without a break in service of a Career Service employee from a Career Service position paid under a salary or rate schedule with steps to another Career Service position paid under a salary or rate schedule with steps; or
 - (c) Reclassification of an encumbered Career Service position involving salary or rate schedules with steps.
- 1130.2 When an employee moves without a break in service from a non-union Career Service position at grade levels 15/16 or 16/17 to a Career Service position under a CS salary schedule with steps, the rate of basic pay on the CS salary schedule shall be set at any step of the grade that does not exceed the employee's highest previous rate.
- 1130.3 When any action moves an employee from a CS salary schedule ("current" schedule) to another grade within the same CS salary schedule or to any grade within another CS salary schedule or Wage Service rate schedule ("new" schedule), the rate of pay on the new schedule shall be determined under one (1) of the following, as appropriate:
- (a) If one hundred one percent (101%) of the representative rate, as defined in sections 1131.11 and 1199 of this chapter, of the employee's grade in his or her current schedule is less than the representative rate of the grade to which he or she is being assigned in either the same schedule or a new schedule, the movement constitutes a promotion, and the employee shall be entitled to one (1) of the following:
 - (1) Basic pay at the lowest rate of the new grade that is equivalent to his or her existing rate of basic pay plus two (2) step increases of the current grade;
 - (2) If the rate determined in (1) above falls between two (2) rates of the new grade, he or she shall be entitled to the higher rate; or
 - (3) If the rate determined in (1) above is higher than any rate of the new grade, he or she shall be entitled to the maximum rate of the new grade.

- (b) If one hundred one percent (101%) of the representative rate, as defined in sections 1131.11 and 1199 of this chapter, of the employee's grade in his or her current schedule is equal to or more than the representative rate of the grade to which he or she is being assigned in either the same schedule or a new schedule, the movement constitutes a reassignment (when "equal to") or a change to lower grade (when "more than"), and the agency may pay the employee in accordance with either of the following:
 - (1) The agency may pay the employee at any rate of the new grade that does not exceed his or her highest previous rate; or
 - (2) If the employee's highest previous rate falls between two (2) rates of the new grade, the agency may pay the employee at the higher rate.

1130.4 When any action moves an employee from one Wage Service rate schedule ("current" schedule) to another grade within the same rate schedule or to any grade within another Wage Service rate schedule or CS salary schedule ("new" schedule), the rate of pay on the new schedule shall be determined under one (1) of the following, as appropriate:

- (a) If one hundred one percent (101%) of the representative rate, as defined in sections 1131.11 and 1199 of this chapter, of the employee's grade in his or her current schedule is less than the representative rate of the grade to which he or she is being assigned in either the same schedule or a new schedule, the movement constitutes a promotion, and the employee shall be entitled to one (1) of the following:
 - (1) Basic pay at the lowest rate of the new grade that is equivalent to his or her existing rate of basic pay plus a two (2) step increase of the current grade (for a rate schedule with ten (10) steps);
 - (2) If the rate determined in (1) above falls between two (2) rates of the new grade, he or she shall be entitled to the higher rate; or
 - (3) If the rate determined in (1) above is higher than any rate of the new grade, he or she shall be entitled to the maximum rate of the new grade.
- (b) If one hundred one percent (101%) of the representative rate, as defined in sections 1131.11 or 1199 of this chapter, of the employee's grade in his or her current schedule is equal to or more than the representative rate of the grade to which he or she is being assigned in either the same schedule or a new schedule, the movement constitutes a reassignment (when "equal to") or a change to lower grade (when "more than"), and the agency may pay the employee in accordance with either of the following:
 - (1) The agency may pay the employee at any rate of the new grade that does not exceed his or her highest previous rate; or

- (2) If the employee's highest previous rate falls between two (2) rates of the new grade, the agency may pay the employee at the higher rate.
- 1130.5 When an employee is reinstated in accordance with Chapter 8 of these regulations, the agency may pay the employee at any rate of the grade that does not exceed his or her highest previous rate; however, if the employee's highest previous rate falls between two (2) rates of the new grade, the agency may pay the employee at the higher rate.
- 1130.6 When an encumbered position is reclassified from the Wage Service Rate System into a Career Service salary schedule with steps under the District Service Salary System, the agency shall pay the employee at the highest rate of the new grade that does not exceed his or her highest previous rate; however, if the employee's highest previous rate falls between two (2) rates of the new grade, the agency shall pay the employee at the higher rate. If the employee's highest previous rate exceeds the maximum rate of the new grade, and the employee is not eligible for a retained rate in accordance with section 1141 of this chapter, the employee shall receive the maximum rate of the new grade.
- 1130.7 The highest previous rate shall be based on a scheduled tour of duty at a rate under an appointment not limited to ninety (90) days or less, or for a continuous period of not less than ninety (90) days under one (1) or more temporary appointments without a break in service.
- 1130.8 Except as provided in section 1130.9 of this section, when an employee's rate of basic pay is one received under the higher minimum rate provision, the highest previous rate shall be the rate to which he or she would have been entitled had the special rate or special salary not applied.
- 1130.9 With the prior approval of the personnel authority, an agency may use a special rate or special salary as the highest previous rate when both of the following are true:
- (a) The employee is reassigned to a position for which no special rate or special salary, or a lesser special rate or special salary, has been established; and
 - (b) The agency head determines that the need for the employee's services, and his or her contribution to the agency's program, will be greater in the position to which reassigned.
- 1130.10 In the application of the highest previous rate provisions, a rate of pay earned under any District government salary or rate schedule shall be the current rate of the same grade and step of that schedule.
- 1130.11 Upon completion or termination of a term or temporary promotion, the agency shall return the employee to the position from which he or she was promoted or to a position of equivalent grade. If the employee served one (1) year or less in the temporary or term promotion, the pay in the grade to which returned shall be at the step the employee would have attained had the promotion not occurred. If the

employee served more than one (1) year in the temporary or term promotion, the pay received in the promotion may be used as the highest previous rate when returned to the former grade.

- 1130.12 An employee who fails to successfully complete a supervisory probationary period and is returned to the grade from which he or she was promoted shall not be entitled to the highest previous rate provisions or a retained rate, but shall be returned to a position of no lower grade than the employee left to accept the supervisory or managerial position and at the step the employee would have attained but for the managerial or supervisory appointment.
- 1130.13 Whenever a special rate or special salary schedule is established, the salary of an employee covered by the special rate or special salary shall be adjusted to the step and grade on the special rate or special salary schedule that corresponds to his or her existing step and grade.
- 1130.14 When an employee is receiving a retained rate under section 1141.2 of this chapter and his or her position becomes subject to a special rate or special salary schedule, the employee's pay shall be adjusted under the provisions of the highest previous rate rule without regard to his or her retained rate. However, if the employee's retained rate is higher than the maximum rate of the special rate or special salary schedule, the employee shall be entitled to receive the retained rate for the remainder of the retained rate period and then shall be placed at the maximum rate of the special rate or special salary schedule.
- 1130.15 The Director, DCHR, shall initiate action to discontinue or revise special rates or special salaries when these rates are no longer necessary for recruitment and retention of personnel.
- 1130.16 When special rates or special salaries for a position are discontinued, the rate of basic pay for an employee shall be determined as follows:
- (a) If the employee is receiving a rate of basic pay equal to one of the rates on the appropriate schedule for his or her grade, the employee's basic pay shall be fixed at that rate;
 - (b) If the employee is receiving a rate of basic pay at a rate between two (2) rates on a salary or rate schedule for his or her grade, the employee's basic pay shall be fixed at the higher of the two (2) rates; or
 - (c) If the employee is receiving a rate of basic pay in excess of the maximum rate under the appropriate schedule for his or her grade, the employee's rate of basic pay shall be fixed in accordance with the provisions of section 1141 of this chapter.

Section 1131.4 (c) is deleted.

Section 1131.10 is amended to read as follows:

1131.10 As applicable for the purpose of computing salary and rate schedules, the percentage authorized for a general pay increase, or the dollar amount if so authorized, shall be added to the representative rate of the appropriate salary or rate schedule and this new rate shall be used as the basis for the determination of the other rates contained on the schedule.

Section 1131.11 is amended to read as follows:

1131.11 The representative rate for District Service salary schedules comprised of grades and steps consisting of annual salaries within each grade and the Wage Service rate schedules shall be the following:

- (a) For grades 1 through 14, the fourth (4th) step of each District Service salary schedule comprised of grades and steps consisting of annual salaries within each grade; and
- (b) The fourth (4th) step of each Wage Service rate schedule.

Section 1131.12 is amended to read as follows:

1131.12 The representative rate for District Service salary schedules comprised of ranges shall be the midpoint for the grade or pay level of the appropriate salary schedule.

Section 1139.5 is amended to read as follows:

1139.5 Exempt time off granted to any individual employee in accordance with this section shall not exceed a total of eighty (80) hours in any consecutive twelve-month (12-month) period; except that, upon request from an agency, the personnel authority may authorize exempt time off, up to a maximum of one hundred twenty (120) hours, for FLSA exempt employees required to perform work in excess of eighty hours in a biweekly pay period because of emergencies or other unforeseen circumstances or situations such as but not limited to the following:

- (a) Work resulting from weather-related events such as snow, hurricanes, or other severe weather conditions;
- (b) Work resulting from publicly scheduled events in the District of Columbia requiring infrastructure support; or
- (c) Emergency situations so declared by the Mayor or designee.

The text of section 1140 is deleted and the section is reserved:

1140 RESERVED

Section 1199, "Definitions," is amended as follows:

1199 DEFINITIONS

The definition of the term “reassignment” is amended to read as follows; and a definition for the term “representative rate” is added to read as follows:

Reassignment – a change of an employee from one position to another position of the same (exact) representative rate.

Representative rate – as provided in section 1131.11 of this chapter, the rate used to determine the nature of a job change when the job change involves different salary or rate schedules (specifically, the representative rate is used to determine if the job change is a promotion, change to lower grade, or reassignment, by comparing the representative rates of the different salary or rate schedules involved). A representative rate is the going rate of the jobs or grades between which the employee is being changed.

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

NOTICE OF FINAL 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 final rulemaking action taken in the above-captioned proceeding. On June 3, 2008, the Commission released Order No. 14826, approving Washington Gas Light Company's ("WGL")² Application for an updated Rights-of-Way Surcharge ("ROW").

2. The 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 with the Commission the ROW Current Factor.⁴ In the tariff filing, WGL sets forth the process used to recover from its customers the D.C. Public Rights-of-Way fees paid by WGL to the District of Columbia government. Specifically, WGL proposes to amend the following tariff page:

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

3. WGL asserts that its tariff amendment will become effective commencing with the April 2008 billing cycle.⁵

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.) states 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*, Surcharge Filing at 1.

⁵ *GT00-2*, Surcharge Filing at 2.

4. A Notice of Proposed Rulemaking regarding WGL's Surcharge Filing was published in the *D.C. Register* on April 11, 2008.⁶ No comments were filed in response to the filing. Subsequently, the Commission approved WGL's Surcharge Filing by Order No. 14826. WGL's Rights-of-Way Surcharge Filing will become effective upon the date of publication of this Notice of Final Rulemaking in the *D.C. Register*.

⁶ 55 D.C. Reg. 4375-4376 (April 11, 2008).

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
ZONING COMMISSION ORDER NO. 07-25
Z.C. Case No. 07-25
(Map Amendment – 11 DCMR)
(Square 2794, Lots 18, 19, 877, 879, 895, 899, and 2001-2047)
May 12, 2008**

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01); having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of the adoption of the following amendments to the Zoning Map included in the Zoning Regulations (Title 11 DCMR).

A Notice of Proposed Rulemaking was published in the *D.C. Register* (“DCR”) on April 4, 2008, at 55 DCR 3501. The Commission took final action to adopt the amendments at a public meeting on May 12, 2008. This final rulemaking is effective upon publication in the *D.C. Register*.

Application, Set Down, and Public Hearing

On September 13, 2007, Scott Whittier, George Maurikes, and Bryan Irving (“Petitioners”) filed a petition to rezone property located in Square 2794, Lots 18, 19, 877, 879, 895, 899, and 2001 through 2047 (“Subject Property”). The petition requested rezoning the Subject Property from R-5-A to the R-5-C Zone District.

The Commission set down the case for a public hearing as a rulemaking case at its November 19, 2007 public meeting.

The Commission held a public hearing on January 28, 2008. George Maurikes testified on behalf of the Petitioners in favor of the rezoning. He further testified the rezoning would not be inconsistent with the District Elements of the Comprehensive Plan for the National Capital (“Comprehensive Plan”). Karrye Braxton, a neighbor residing at 1320 Missouri Avenue, testified in opposition to the rezoning. The Office of Planning (“OP”) testified in support of the map amendments. At the conclusion of the hearing, the Commission ordered the record to remain open to receive a memorandum from the Petitioners explaining why R-5-C zoning was

Z.C. NOTICE OF FINAL RULEMAKING & ORDER NO. 07-25

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preferable to R-5-B zoning; and a report from the Office of Planning addressing whether other properties in the immediate area should be rezoned.

Relationship to the Comprehensive Plan

The amendments would not be inconsistent with the Comprehensive Plan, and are consistent with the following elements of the Comprehensive Plan:

- **Land Use Element:** Policy LU-2.1.3: Conserving, Revitalizing and Enhancing Neighborhoods – Recognize the importance of balancing goals to increase the housing supply and expand neighborhood commerce with parallel goals to protect neighborhood character, preserve historic resources and restore the environment. The overarching goal to “create successful neighborhoods” in all parts of the city requires an emphasis on conservation in some neighborhoods and revitalization in others.

Policy LU-2.1.10: Multi-Family Neighborhoods – Maintain the multi-family residential character of the District’s medium- and high-density areas. Limit the encroachment of large scale, incompatible uses into these areas, and make these areas more attractive, pedestrian-friendly and transit accessible.

Rezoning the Subject Property will make the existing structures conforming and will preserve the apartment house character of the community.

- **Housing Element:** Policy H-1.1.1: Private Sector Support - Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives.

Policy H-1.1.3: Balanced Growth - Strongly encourages the development of new housing on surplus, vacant and underutilized land in all parts of the city. Ensure that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including the need for low- and moderate-density single family homes as well as the need for higher-density housing.

Rezoning the Subject Property will increase the potential number of residential units in the city and enable limited residential growth on-site, helping the city meet its housing needs.

- **Generalized Land Use Map:** The Generalized Land Use Map includes the Subject Property in the Medium Density Residential Land Use Category. This land use category is compatible with development in the R-5-C Zone District.

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Great Weight Given to ANC Issues and Concerns

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) to give great weight to the affected ANC's written recommendation. ANC 4A submitted a statement in support of the petition. The Commission has carefully considered ANC 4A's recommendation for approval, concurs in its recommendation, and has given it the great weight it is entitled.

Proposed Action

The Commission took proposed action at a properly notice public meeting held on March 10, 2008.

Prior to taking Proposed Action, the Commission noted the receipt of three supplemental filings. First, a memorandum from the Petitioners explaining why they believed R-5-C zoning was appropriate. Second, a report from OP stating that it studied the area surrounding the Subject Property and did not recommend any further rezoning. Third, a letter from Karrye Braxton withdrawing her opposition to the petition, and stating that she was now in support.

The Notice of Proposed Rulemaking was published in the *D.C. Register* on April 4, 2008 at 55 DCR 3501, for a 30-day notice and comment period.

The proposed rulemaking was referred to the National Capital Planning Commission ("NCPC") under the terms of § 492 of the District of Columbia Charter. NCPC, through a delegated action dated March 27, 2008, found that the proposed text amendments would not adversely affect the identified federal interests, nor be inconsistent with the Comprehensive Plan for the National Capital.

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency.

Final Action

At its properly noticed May 12, 2008 public meeting, the Commission took final action to approve the proposed text amendments.

Based on the above, the Commission finds that the proposed amendments to the Zoning Map are in the best interests of the District of Columbia and is consistent with the purpose of the Zoning Regulations and the Zoning Act.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to the Zoning Map:

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Z.C. CASE NO. 07-25

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The Zoning Map of the District of Columbia is amended to zone the following lots from R-5-A to R-5-C:

Square	Lots
2974	18, 19, 877, 879, 895, 899, and 2001 through 2047

At its public meeting on March 10, 2008, the Zoning Commission **APPROVED** the petition by a vote of **5-0-0** (Anthony J. Hood, Gregory N. Jeffries, Curtis L. Etherly, Jr., Michael G. Turnbull [by absentee ballot], and Peter G. May to approve).

At its public meeting on May 12, 2008, the Zoning Commission **ADOPTED** this Order by a vote of **5-0-0** (Anthony J. Hood, Peter G. May, Gregory N. Jeffries, and Curtis L. Etherly, Jr. to adopt; Michael G. Turnbull, not present, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in *the D.C. Register*; that is, on _____.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
ZONING COMMISSION ORDER NO. 07-25
Z.C. Case No. 07-25
(Map Amendment – 11 DCMR)
(Square 2794, Lots 18, 19, 877, 879, 895, 899, and 2001-2047)
May 12, 2008**

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., September 11, 2007

Plan for Building Permit of SQUARE 2794 LOTS 18, 19, 877, 879, 895, 899, 21 & 22

Scale: 1 inch = 50 feet

Recorded in Book 109 Page 74 (LOTS 18 & 19)
Book A&T Page 1669 (LOTS 877 & 879)
Book A&T Page 2275 (LOT 895)
Book A&T Page 3444-P (LOT 899)
Book 197 Page 88 (LOT 21)
Book 199 Page 104 (LOT 22)

Receipt No. 21698

Furnished to: PWSP

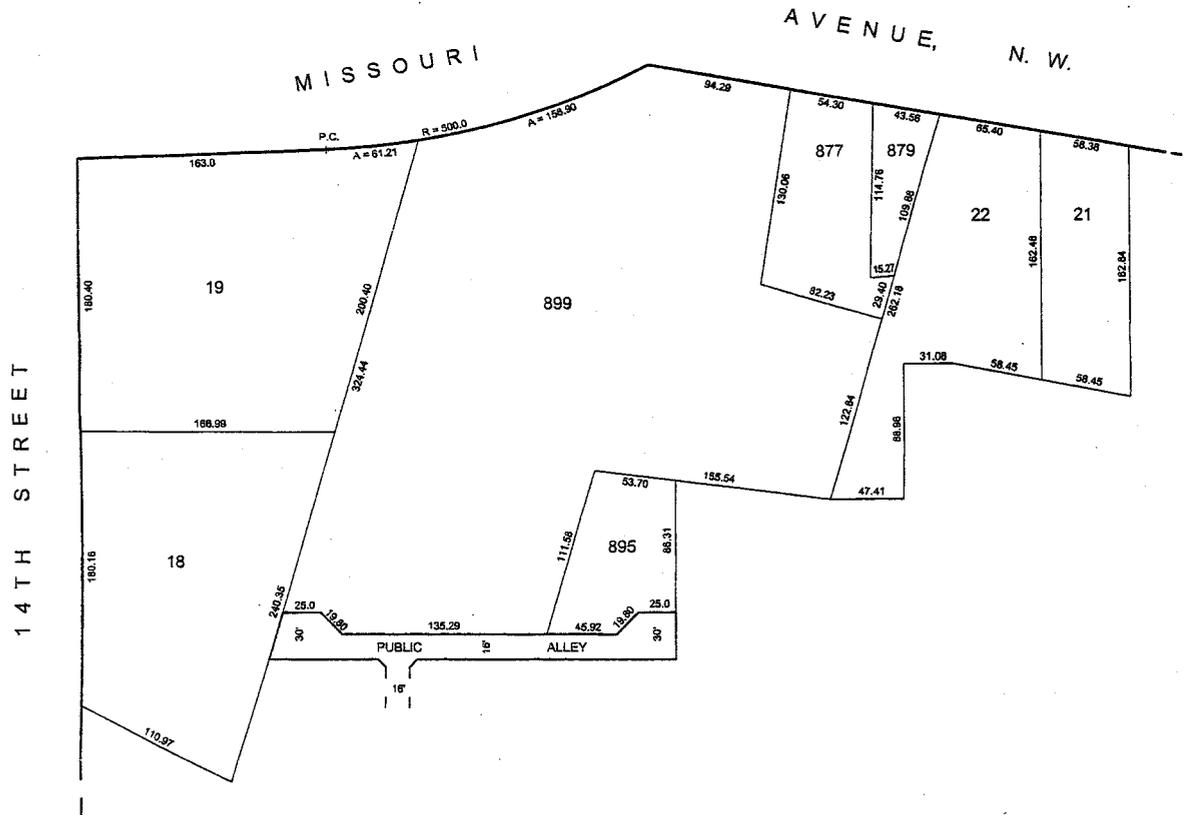
[Signature]
Surveyor, D.C.
By: L.M.A. *[Signature]*

I hereby certify that all existing improvements shown hereon, are complete and are correctly placed; that all proposed buildings or construction, or parts thereof, covered hereon, are correctly dimensioned and placed, and agree with plans shown on the application; that the foundations shown hereon are drawn, and dimensioned, accurately to the same scale as the survey lines shown on this plan; that by reason of the proposed improvements to be erected as shown hereon the area of any adjoining lots, premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area, where required by the Zoning Regulations, will be reserved in accordance with the Zoning Regulations, and that this area has been correctly shown and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or lots, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private residential property.)

Date: _____

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



Z.C. Case 07-25