

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

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**NOTICE OF FINAL RULEMAKING**

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The Deputy Mayor for Planning and Economic Development, pursuant to the authority set forth in section 102(g) of the Workforce Housing Production Program Approval Act of 2006 (“Act”), effective March 14, 2007 (D.C. Law 16-278; D.C. Official Code §§ 6-1061.01 *et seq.*), and Mayor’s Order 2007-180, dated August 3, 2007, hereby gives notice of the adoption of the following rules, adding a new Chapter 35 (Workforce Housing Land Trust Program) to Title 14 (Housing) of the District of Columbia Municipal Regulations (“DCMR”).

The rules set forth the general policies, guidelines, and requirements for the development and implementation of a land trust program to assist in the development and financing of one thousand (1,000) units of workforce housing within three (3) years after the effective date of the Act.

A notice of emergency and proposed rulemaking was published in the *D.C. Register* on August 31, 2007 (54 DCR 8610). No comments on the proposed rules were received as a result of publication of the notice and no changes have been made to the text of the proposed rules. These final rules shall become effective on the date of publication of this notice in the *D.C. Register*.

Title 14 (Housing) DCMR is amended by adding a new Chapter 35 (Workforce Housing Land Trust Program) to read as follows:

**CHAPTER 35 WORKFORCE HOUSING LAND TRUST PROGRAM**

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### **3500 GENERAL PURPOSES**

- 3500.1 The Workforce Housing Production Program Approval Act of 2006, effective March 14, 2007 (D.C. Law 16-278; D.C. Official Code §§ 6-1061.01 *et seq.*) authorizes the development and implementation of a land trust program that will:
- (1) Create housing units that are permanently affordable to, and occupied by, households with annual incomes at or below one hundred twenty percent (120%) of the area median income; and
  - (2) Maintain a portfolio average of housing unit purchase prices that is affordable to households with annual incomes at or below eighty percent (80%) of the area median income.
- 3500.2 The goals of the land trust program shall include the development of an administrative and financial structure by which an allocation of ten million dollars (\$10,000,000) of District funds leverages approximately sixty-five million dollars (\$65,000,000) of private debt and equity investment, providing an average of seventy-five thousand dollars (\$75,000) per eligible household in land trust financing, and assisting in the development and purchase of one thousand (1,000) permanently affordable housing units occupied by eligible households within three (3) years after the effective date of the Act.

### **3501 FORMATION AND ADMINISTRATION**

- 3501.1 The Mayor's delegee shall select a land trust through a competitive bid process.
- 3501.2 The Mayor's delegee and the land trust shall enter into a contractual agreement which shall set forth duties and responsibilities of the land trust in implementing the land trust program and handling District funds.
- 3501.3 The land trust shall be governed by a non-paid board of directors. The board of directors shall include one non-voting member selected by the Deputy Mayor.
- 3501.4 The land trust shall develop, administer, and implement the land trust program in accordance with the Act, the Plan, the land trust agreement, and the requirements of this chapter.

- 3501.5 The Mayor's delegee shall monitor whether the land trust is developing, administering, and implementing the land trust program in accordance with the Act, the Plan, the land trust agreement, and the requirements of this chapter.
- 3501.6 The land trust shall collaborate with the Mayor, Deputy Mayor, District departments, agencies, and instrumentalities, including the Department of Housing and Community Development and Housing Finance Agency, and non-profit organizations to maximize the efficient and effective use of their homeownership counseling and home purchase assistance programs and products.
- 3501.7 The Mayor's delegee shall periodically provide the land trust with written housing policies relevant to the land trust program, such as the District's policy to seek the creation and preservation of mixed-income housing and to deconcentrate housing serving low-income households. To the extent possible without threatening the viability of the land trust or the land trust program, the land trust shall adopt policies and procedures that align with the District's policies. If the land trust determines that it is unable to achieve or maintain complete alignment with the District's policies without threatening the viability of the land trust or the land trust program, the land trust shall provide to the Mayor's delegee written documentation of the circumstances that create the inability to achieve or maintain such alignment and threaten the viability of the land trust or land trust program.
- 3501.8 No officer, employee, or agent of the District government or the land trust who exercises responsibility in connection with the administration of the land trust program shall obtain any interest, direct or indirect, in the proceeds of land trust financing or a contract entered into by an applicant for or recipient of land trust financing; provided, that an officer, employee, or agent of the District government or the land trust who is otherwise eligible may receive land trust financing in accordance with the rules, procedures, and regulations of the land trust program. A member of an advisory board to the land trust shall not be considered an officer, employee, or agent of the land trust if the advisory board does not have administrative or legal responsibilities.
- 3501.9 The land trust shall establish policies requiring that a land trust homeowner recuse himself or herself from decisions, whether operational or board-related, that directly impact the financial interest of the land trust homeowner.

## **3502 FUNDING, FEES, AND COSTS OF ADMINISTRATION**

- 3502.1 The land trust shall maintain in a separate account all District funds that are allocated to the land trust and shall release such funds only to assist eligible households. All Housing Production Trust Fund funds that are allocated to the land trust shall be released only to assist eligible households with annual incomes at or below eighty percent (80%) of the area median income.

- 3502.2 The land trust may receive and expend, to further the purposes of the land trust program, fees, revenues, interest earnings derived from the activities of the land trust, returns on equity investments, repayments of principal and interest on loans or other financing provided by the land trust, and proceeds realized from the liquidation of security interests held by the land trust under the terms of any equity, loan, or financing agreement or any other security instrument.
- 3502.3 The land trust may charge reasonable fees for leases of real property and improvements, processing the evaluation of applications, providing loans, equity, or other financing, monitoring compliance with provisions of the Act, the Plan, and this chapter, and for other purposes related to the land trust program. The fees and earnings thereon shall be used by the land trust to pay the costs of administering and accomplishing the purposes of the land trust program.
- 3502.4 The land trust shall establish a schedule of fees and expenses to be charged under the land trust program.

### **3503 AFFORDABILITY AND INCOME STANDARDS**

- 3503.1 For the purposes of determining affordability in accordance with the requirements of the Act and this chapter, affordability shall be measured based on a front end ratio of thirty-five percent (35%) or less.
- 3503.2 For the purposes of determining the income of a household, the land trust shall use the methods and procedures set forth in 24 C.F.R. § 92.203(b) (a subsection of the regulations promulgated by the United States Department of Housing and Urban Development to implement the HOME Investment Partnerships Program).
- 3503.3 For the purposes of determining household income limits, the land trust shall use the area median income standards applicable to the Housing Production Trust Fund under section 2 of the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2801).

### **3504 LAND TRUST FINANCING: GENERAL**

- 3504.1 The land trust may provide financial assistance for the purchase, construction, or acquisition of housing units that are permanently affordable to households with annual incomes at or below one hundred twenty percent (120%) of the area median income through the provision of land trust financing, which shall consist of individual financing and development financing.
- 3504.2 Individual financing shall be provided to assist eligible households in the purchase of qualified housing units or land trust housing units.
- 3504.3 Development financing shall be provided to assist in the financing of the construction or acquisition of qualified housing units or land trust housing units.

- 3504.4 No land trust financing shall be provided for housing units outside the District.
- 3504.5 Another District-administered subsidy may be combined with land trust financing only if:
- (a) The housing units assisted with the land trust financing would meet the requirements of the land trust program, including affordability level and permanent affordability, without the other District-administered subsidy; and
  - (b) The combination of the land trust financing and other District subsidy achieves greater affordability of housing units that are subject to a use restriction that permanently requires occupancy by low income households.
- 3504.6 If another District subsidy is combined with land trust financing, the calculation of the portfolio average of household incomes and the portfolio average of housing unit purchase prices achieved by the land trust financing shall exclude the other District subsidies; provided, that the lower purchase price and/or lower purchaser household income achieved through the combination may be included in the calculation if the land trust financing achieves permanent affordability of housing units that are not subject to a use restriction, previously imposed by a District-administered program, that permanently requires occupancy by low-income households.
- 3504.7 The land trust may request, in writing, a written waiver from the Mayor's delegee for the limitations on calculating the portfolio averages set forth in subsection 3504.6.

### **3505 FINANCING DOCUMENTS**

- 3505.1 The land trust shall submit for the approval of the Mayor's delegee template loan agreements and loan documents and template equity agreements and equity documents to be used in the provision of land trust financing ("template documents"). The template documents to be approved by the Mayor's delegee shall include promissory notes, loan agreements, equity agreements, deeds of trust, ground leases, declarations of covenants, financing statements, assignments of leases, and any other legal documents that secure the land trust financing or enforce affordability or resale restrictions on land trust housing units.
- 3505.2 Each template document required to be submitted for the approval of the Mayor's delegee under subsection 3505.1 shall include provisions that grant the land trust:
- (a) A security interest in the land trust housing unit; and
  - (b) The right to enforce affordability and resale restrictions on the land trust housing unit.

- 3505.3 The land trust shall not execute a loan agreement or loan document or equity agreement or equity document that does not conform to a template document previously approved by the Mayor's delegee.
- 3505.4 The land trust shall request approval from the Mayor's delegee when making a substantive change to a previously approved template document. Unless and until the substantive change is approved by the Mayor's delegee, the land trust shall use the previously approved template document.

**3506 PROCEDURES FOR REVIEWING, APPROVING, AND PROVIDING FINANCING**

- 3506.1 The land trust shall establish and implement written procedures, instructions, guidelines, forms, standards, requirements, and criteria for the solicitation, receipt, processing, evaluation, and approval of applications for, and for providing or closing on, development financing commitments, development financing, and individual financing.
- 3506.2 The application for development financing shall include the requirements set forth in section 3510.3.
- 3506.3 The standards and criteria for approving individual financing and development financing shall include the following:
- (a) The property to be assisted by the land trust shall be in compliance with the Zoning Regulations of the District of Columbia (as such term is defined in 11 DCMR § 100.5), the Housing Code (chapters 1 through 15 of Title 14, DCMR), and the Construction Codes (as such term is defined in 12A DCMR § 101.2), at the time of closing on the land trust financing; provided, that if the land trust is providing land trust financing to correct a current or imminent major system failure or other substantial defect, the property may be in non-compliance with the foregoing regulations and codes at the time of closing but shall be in compliance with the foregoing regulations and codes when the housing units assisted by the land trust financing are offered for sale;
  - (b) Land trust financing shall not be concentrated in poverty census tracts or high poverty census tracts;
  - (c) The land trust shall not provide financing, either through development financing, individual financing, or a combination of development and/or individual financing, for more than fifty percent (50%) of the housing units in a development consisting of over twenty (20) housing units in a poverty census tract, nor for more than twenty-five percent (25%) of the housing units in a development consisting of over twenty (20) housing units in a high poverty census. This provision shall not apply to tenant rental-to-ownership

conversions and may be waived in writing by the Mayor's delegee for good cause shown; and

- (d) The standards and criteria for individual financing set forth in section 3507 or the standards and criteria for development financing set forth in section 3510.
- 3506.4 The standards and criteria for closing on a development financing shall include a requirement that a minimum level of equity has been or will be invested by the developer in the development.
- 3506.5 The land trust shall submit for approval by the Mayor's delegee the applications, procedures, instructions, guidelines, forms, standards, requirements, and criteria required to be established under subsection 3506.1, including the standards, criteria, and requirements referenced in subsections 3506.2, 3506.3(d), and 3506.4 and those set forth in sections 3507 and 3510 .
- 3506.6 The land trust shall not provide land trust financing until the initial applications, procedures, instructions, guidelines, forms, standards, requirements, and criteria of the land trust have been approved by the Mayor's delegee under subsection 3506.5.
- 3506.7 The land trust shall submit for approval by the Mayor's delegee any substantive change to a previously approved procedure, instruction, guideline, form, standard, requirement, or criterion. Unless and until the change is approved by the Mayor's delegee, the land trust shall use the previously approved procedure, instruction, guideline, form, standard, requirement, or criterion.
- 3506.8 The land trust shall not review, approve, reject, provide, or close on land trust financing in a manner that is inconsistent with the applications, procedures, instructions, guidelines, forms, standards, requirements, and criteria of the land trust that have been approved by the Mayor's delegee under subsection 3506.5.
- 3506.9 The Mayor's delegee shall not unreasonably withhold or delay approval of an application procedure, instruction, guideline, form, standard, requirement, or criterion, or a substantive change to an application procedure, instruction, guideline, form, standard, requirement, or criterion, submitted for approval ("approval request"). The Mayor's delegee may reject or approve an approval request in whole or in part. An approval request shall be deemed approved if the Mayor's delegee does not reject the approval request, in writing, with a reasonably detailed rationale for the rejection, within thirty (30) calendar days after the Mayor's delegee receives the approval request. If the Mayor's delegee rejects an approval request, in whole or in part, the Mayor's delegee shall, upon the request of the land trust, undertake good faith negotiations with the land trust to resolve the issues that led to the rejection. Unless and until the issues are resolved and the approval request is approved, the land trust shall operate under previously approved procedures, instructions, guidelines, forms, standards, requirements, and criteria.

- 3506.10 The land trust shall approve and provide land trust financing, consistent with the standards and criteria approved by the Mayor's delegee pursuant to section 3506.5, so that the geographic distribution of, unit distribution of, and development criteria for land trust housing units align with the District's housing policies, consistent with subsection 3501.7. If the land trust determines that it is unable to achieve or maintain such an alignment without threatening the viability of the land trust or the land trust program, the land trust shall provide to the Mayor's delegee written documentation of the circumstances that create the inability to achieve or maintain such alignment and threaten the viability of the land trust or land trust program. The Mayor's delegee may waive the requirement of this subsection in whole or in part.

### **3507 INDIVIDUAL FINANCING TO ELIGIBLE HOUSEHOLDS**

- 3507.1 The land trust may provide individual financing to eligible households to assist in the purchase of qualified housing units that are or will be permanently affordable to households with incomes at or below one hundred twenty percent (120%) of the area median income.
- 3507.2 In determining whether to provide individual financing to an eligible household, the land trust shall apply, in addition to the standards and criteria required by section 3506, the following standards and criteria:
- (a) Generally accepted standards that are not considered to be predatory when reviewing the credit worthiness of applicants for land trust financing. Loans that are described in section 202 of the Home Loan Protection Act of 2002 ("HPLA"), effective May 7, 2002 (D.C. Law 14-132; D.C. Code § 26-1152.02), regardless of the lender, shall be considered predatory.
  - (b) The first mortgage loan for the qualified housing unit shall not be a loan described in section 202 of HPLA (D.C. Official Code § 26-1152.06).
  - (c) No first mortgage loan shall be deemed acceptable by the land trust unless it is supported by:
    - (1) A hazard insurance policy and a title insurance policy, both of which shall conform to industry standards;
    - (2) A property appraisal report, which shall conform to industry standards; and
    - (3) A written property inspection report, prepared by a licensed inspector acceptable to the land trust, which shows no current or imminent major system failure or other substantial defect, except in an acquisition or financing where the land trust is providing a loan to correct the current or imminent major system failure or other substantial defect.

- (e) A household consisting entirely of full-time students shall not be eligible for a land trust financing with the exception of:
  - (1) Students who are married or in a domestic partnership and file a joint tax return;
  - (2) Students who receive assistance under title IV of the Social Security Act, approved August 22, 1996 (88 Stat. 2351; 42 U.S.C. §§ 601 *et seq.*);
  - (3) Students enrolled in a job training program; or
  - (4) Students who are single parents with children who are their dependents (as such term is defined in section 152 of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 43; 26 U.S.C. § 152)).
- (f) In selecting the eligible household to be provided individual financing for a specific land trust housing unit, priority shall be given to the eligible household, otherwise qualified to purchase the land trust housing unit, with the lowest household income.

3507.3 The terms of each individual financing to an eligible household shall include:

- (a) Terms consistent with a template document approved under subsection 3505.1;
- (b) A provision prohibiting a modification to the first mortgage loan that would make the first mortgage loan a loan described in section 202 of HPLA (D.C. Official Code § 26-1152.02);
- (c) A provision granting the land trust the first right to purchase the land trust housing unit, or to arrange for the purchase of the land trust housing unit by another eligible household, if the eligible household offers the land trust housing unit for sale;
- (d) A requirement that the recipient of the individual financing provide written notice to the land trust of his or her intent to sell the land trust housing unit;
- (e) The terms, conditions, and procedures by which the land trust may exercise its option to acquire or arrange for the purchase by an eligible household of the land trust housing unit for which it has received notice of intent to sell by the recipient of the individual financing;
- (f) A requirement that the proceeds of the sale or refinancing of the land trust housing unit shall be apportioned between the eligible household and the land trust under circumstances set forth in the individual financing;

- (g) The formula for the apportionment of proceeds from the sale or refinancing of the land trust housing unit;
- (h) A provision requiring that if the land trust housing unit is transferred through devise, intestacy, gift, or any other type of transfer, the subsequent owner shall be subject to the provisions of this chapter; provided, that this requirement shall not be construed to limit mortgagee rights under foreclosure or similar proceedings;
- (i) A requirement that the eligible household maintain the land trust housing unit in compliance with the Housing Code (chapters 1 through 15 of Title 14, DCMR); and
- (j) Normal and customary provisions and any other terms the land trust deems useful and in furtherance of the purposes of the Act, the Plan, or this chapter.

3507.4 Any promissory note, loan agreement, equity agreement, deed of trust, ground lease, declaration of covenants, financing statement, assignment of lease, or other legal document used in conjunction with individual financing shall not differ substantially from the template documents approved under section 3501.5.

3507.5 The land trust shall place or cause to be placed deed restrictions related to the resale and continuing affordability of each land trust housing unit assisted by individual financing.

### **3508 DEVELOPMENT FINANCING COMMITMENTS AND DEVELOPMENT FINANCING: GENERAL PROVISIONS**

3508.1 The land trust may provide development financing to developers to provide financial assistance for the construction or acquisition of housing units that are or will be permanently affordable to households with incomes at or below one hundred twenty percent (120%) of the area median income.

3508.2 The land trust may provide a written development financing commitment to a developer prior to providing development financing.

3508.3 At least once each year, the land trust shall publish in a newspaper of general circulation within the District a notice of the availability of development financing and development financing commitments. The notice shall include the procedures, standards, and criteria used to evaluate and approve applications for development financing commitments and development financing, as have been approved by the Mayor's delegee under subsection 3506.

### **3509 DEVELOPMENT FINANCING COMMITMENTS**

- 3509.1 In determining whether to provide a development financing commitment, the land trust shall use the applicable procedures, standards, and criteria approved by the Mayor's delegee under subsection 3506.
- 3509.2 Upon the occurrence of the conditions set forth in the development financing commitment, the land trust may provide development financing to the developer that received the development financing commitment.

### **3510 DEVELOPMENT FINANCING**

- 3510.1 The land trust may provide development financing to a developer notwithstanding whether the land trust previously issued a development financing commitment to the developer.
- 3510.2 Any promissory note, loan agreement, equity agreement, deed of trust, ground lease, declaration of covenants, financing statement, assignment of lease, or other legal document used in conjunction with a development financing shall not differ substantially from the template documents approved under section 3506.
- 3510.3 The application for development financing established under section 3506 shall include requirements that developers:
- (a) Submit pro formas that detail project costs with and without assistance from the land trust;
  - (b) Certify that assisted units are or will be of equal quality to comparable market-rate units;
  - (c) Certify that the developer will comply with all applicable provisions of section 3511; and
  - (d) Specify the proposed number of land trust housing units, and the proposed sizes, types, quality, and prices or levels of affordability of the units.
- 3510.4 In determining whether to provide development financing to a developer, the land trust shall apply, in addition to the standards and criteria set forth in section 3506, the following standards and criteria:
- (a) Geographic distribution, unit distribution, and development criteria goals;
  - (b) Developer experience, development team members, and the developer's equity contribution to the project;
  - (c) Site control and project readiness;

- (d) The extent to which developer submissions meet or exceed the criteria described in paragraphs (a), (b), and (c) of this subsection;
- (e) Marketing strategies;
- (f) Plans and mechanisms to attain and maintain affordability; and
- (g) The requirement that total construction or permanent financing shall not exceed the available security interest.

3510.5 The terms of each development financing shall include:

- (a) A requirement that any promissory note, loan agreement, equity agreement, deed of trust, ground lease, declaration of covenants, financing statement, assignment of lease, or other legal document used in conjunction with the construction loan shall secure the loan and shall contain such other provisions as are normal and customary if the provisions do not conflict with this chapter or any other District law or regulation;
- (b) The specific number of land trust housing units and the sizes, types, quality, and price or level of affordability of each unit; and
- (c) A limit on developer profit, if fifty percent (50%) or more of the housing units are assisted by the development financing.

3510.6 The land trust shall not close on a development loan unless:

- (a) The required minimum percentage of presales have been made and the required minimum level of developer equity has been or will be invested in the applicable project; and
- (b) The developer has received all required zoning approvals, permits, and additional financing sources.

3510.7 The land trust shall place or cause to be placed deed restrictions related to the resale and continuing affordability of each land trust housing unit assisted by development financing.

3510.8 The land trust shall determine and make available to the public information on the terms of each development financing.

3510.9 Each development financing that is in the form of a loan shall be a recourse loan.

### **3511 PURCHASE PRICE**

- 3511.1 The purchase price of a qualified housing unit or land trust housing unit shall not exceed by more than five percent (5%) the value of the qualified housing unit or land trust housing unit as established by a licensed independent appraiser.
- 3511.2 In the case of a cooperative housing unit, the share price or other investment required shall not exceed by more than five percent (5%) the proportional value of the unit, calculated on a square foot basis, relative to the value of the entire cooperative as established by a licensed independent appraiser.
- 3511.3 If more than one appraisal is made on the qualified housing unit or land trust housing unit, the purchase price or, in the case of a cooperative housing unit, the share price or other investment required shall not exceed by more than five percent (5%) the average of all appraisals by licensed independent appraisers within the six (6) months prior to the proposed sale. The board of directors of the land trust may waive the requirement of this subsection, on an individual basis, for good cause.
- 3511.4 In developments where substantial rehabilitation or conversion activities are to occur, the purchase price or cooperative unit cost shall not exceed by more than five percent (5%) the as-improved value of the property as established by a licensed independent appraiser.

## **3512 SUBSEQUENT TRANSFERS**

- 3512.1 A property appraisal shall be conducted prior to the sale of a land trust housing unit.
- 3512.2 The land trust shall establish terms, conditions, and procedures by which the land trust shall exercise its option to acquire or arrange for the purchase by an eligible household of a land trust housing unit for which it has received notice of intent to sell.
- 3512.3 The land trust shall establish a formula for the apportionment of proceeds from the resale or refinancing of a land trust housing unit. The formula shall be designed and applied in a manner consistent with the Act.
- 3512.4 Upon the resale of a land trust housing unit, the land trust may set a new permanent affordability formula or mechanism for the unit if the new formula or mechanism complies with the Act and this chapter.

## **3513 INITIAL REPORT; NOTIFICATION OF FISCAL YEAR**

- 3513.1 By September 30, 2007, the land trust shall submit to the Mayor's delegee its business plan, which shall include the following information:
- (a) An estimate of the annual cost of administering the land trust program;
  - (b) An annual operating budget;

- (c) A staffing plan;
- (d) A schedule of all fees and expenses to be charged under the land trust program;
- (e) A formula governing the allocation of proceeds from the sale of a land trust housing unit;
- (f) Sample underwriting standards, applicant evaluation procedures, and other criteria for approval of land trust financing;
- (g) Investments of all types in the land trust and by the land trust;
- (h) Marketing strategies;
- (i) Standards for providing development financing to developers, including development team experience, site control, project readiness, and the developer's equity contribution to the project;
- (j) Priorities and methodologies to assure geographic distribution of development financing and individual financing;
- (k) Priorities and methodologies to assure distribution of development financing and individual financing to enable mixed-income developments;
- (l) A method for evaluating developer submissions;
- (m) Planned acquisitions and dispositions of properties and assets;
- (n) Plans to attain and maintain affordability;
- (o) Priorities and methodologies to assure that land trust financing meet or exceed the household income and land trust portfolio affordability criteria required under the Act and this chapter;
- (p) Draft promissory notes, loan agreements, equity agreements, deeds of trust, ground leases, declarations of covenants, financing statements, assignments of leases, and other legal documents that secure land trust financing or enforce affordability or resale restrictions on land trust housing units; and
- (q) Such additional information as may be reasonably requested by the Mayor's delegee.

3513.2 The Land Trust shall determine and notify the Mayor's delegee of its fiscal year within sixty (60) days after its selection by the Mayor's delegee.

**3514 QUARTERLY REPORTS**

On or before December 31, 2007, and every three (3) months thereafter for the duration of the land trust program, the land trust shall submit a report that provides the following information with respect to land trust activity during the reporting period:

- (a) The number, dollar value, and geographic distribution of new individual financings to eligible households;
- (b) Information regarding each individual financing provided and each land trust housing unit assisted by an individual financing during the reporting period, including:
  - (1) The asking sales price and actual purchase price of each land trust housing unit;
  - (2) The date of origination of each land trust financing;
  - (3) The amount of each land trust financing;
  - (4) The name or unique identifying number of each household that received a land trust financing;
  - (5) The number of household members occupying each land trust housing unit;
  - (6) The certified income of each household receiving a land trust financing;
  - (7) The square footage of each land trust housing unit;
  - (8) The number of bedrooms of each land trust housing unit; and
  - (9) The address of each land trust housing unit;
- (c) The number, dollar value, and geographic distribution of development financing commitments and development financing provided to developers during the reporting period;
- (d) Information regarding each development provided a development financing commitment or development financing during the reporting period, including:
  - (1) The name of the developer;
  - (2) The location of the development;

- (3) The asking sales price and actual purchase price of each land trust housing unit in the development;
- (4) The status of the development; and
- (5) The amount of the development financing; and
- (e) Copies of any compliance reports or other regulatory correspondence relating to loans, grants, or equity investments provided to the land trust, including New Markets Tax Credits reporting and other regulatory correspondence with the Community Development Financial Institutions Fund.

**3515 ANNUAL REPORTS; ANNUAL AUDITED FINANCIAL STATEMENTS**

3515.1 Within sixty (60) days after the close of each fiscal year of the land trust, the land trust shall submit to the Mayor's delegee and the Council an annual report on the status of the land trust program. The report shall include:

- (a) Any change in the land trust's business plan;
- (b) An evaluation of the current compliance and projection of future compliance with the Act's requirements that:
  - (1) Land trust housing units be permanently affordable to and occupied by households with annual incomes at or below one hundred twenty percent (120%) of the area median income; and
  - (2) The portfolio average of housing unit purchase prices be affordable to households with annual incomes at or below eighty percent (80%) of the area median income;
- (c) The amount of money expended from the land trust during the fiscal year, including all land trust financings and other programmatic expenses;
- (d) The number of land trust financings made during the fiscal year;
- (e) The number, amount, and geographic distribution of land trust financings made to very low income, low income, and moderate income households;
- (f) Information on each land trust financing made during the fiscal year and on each land trust housing unit assisted during the fiscal year, including:
  - (1) The asking sales price and actual purchase price of each land trust housing unit;

- (2) The date of origination of each land trust financing;
  - (3) The amount of each land trust financing;
  - (4) The number of household members occupying each land trust housing unit;
  - (5) The certified income of each household receiving a land trust financing;
  - (6) The square footage of each land trust housing unit;
  - (7) The number of bedrooms of each land trust housing unit; and
  - (8) The address of each land trust housing unit;
- (g) Information on each development provided a development financing commitment or development financing made during the fiscal year, including:
- (1) The name of the developer;
  - (2) The location of the development;
  - (3) The asking sales price and actual purchase price of each land trust housing unit in the development;
  - (4) The status of the development; and
  - (5) The amount of the development financing;
- (h) Any substantive changes to promissory notes, loan agreements, equity agreements, deeds of trust, ground leases, declarations of covenants, financing statements, assignments of leases, or other legal documents that secure the land trust financing or enforce affordability or resale restrictions on land trust housing units;
- (i) A determination of affordability for each land trust housing unit; and
- (j) Such additional information as may be requested by the Mayor's delegee.

3515.2 The land trust shall prepare financial statements at the end of each of its fiscal years in conformity with generally accepted accounting principles. The financial statements shall be audited by an independent certified public accountant in accordance with generally accepted auditing standards. A copy of the unaudited financial statement of the land trust shall be provided to the Mayor's delegee within 90 days after the end of each fiscal year of the land trust. Copies of each audited financial statement and audit

report shall be provided to the Mayor's delegee within one hundred eighty (180) days after the end of each fiscal year of the land trust and shall be open to public inspection.

**3516 ACCESS TO LAND TRUST RECORDS**

The land trust shall provide the Mayor's delegee, upon request, with access to any and all information and records within the possession or control of the land trust related to the land trust's operation and administration of the land trust program.

**3517 REPORT ON LAND TRUST PROGRAM**

3517.1 No later than sixty (60) days after the conclusion of the land trust program or three years and sixty (60) days after the effective date of the Act, whichever occurs first, the Mayor's delegee shall submit to the Council a report on the land trust program. The report shall include recommendations for a permanent workforce housing program.

**3518 COMPLIANCE**

3518.1 If the Mayor's delegee determines that the land trust is not in substantial compliance with the Act, the Plan, the land trust agreement, or this chapter, the Mayor's delegee shall provide written notice of such noncompliance to the land trust.

3518.2 If a federal entity or other investor defaults any portion of the loans, grants, or equity investments provided to the land trust, such default shall be considered substantial noncompliance with this chapter.

3518.3 Within thirty (30) days after receiving a written notice of noncompliance from the Mayor's delegee, the land trust shall submit a written plan ("corrective plan") describing in detail the steps that will be taken to correct all events of noncompliance identified by the Mayor's delegee.

3518.4 Within thirty (30) days after the Mayor's delegee receives the corrective plan, the Mayor's delegee shall accept or reject the corrective plan.

3518.5 If the land trust fails to submit a corrective plan, the Mayor's delegee rejects the corrective plan, or the land trust fails to take the steps detailed in the corrective plan approved by the Mayor's delegee, the Mayor's delegee may require the land trust to:

- (a) Transfer to another 501(c)(3) organization all rights, including rights to first refusal and rights to enforce deed restrictions, for a percentage of land trust financings equal to the District proportion, as defined in paragraph (b) of this subsection ; and

- (b) Transfer to another 501(c)(3) organization assets with a value equal to the total assets of the land trust multiplied by the proportion of the outstanding financial investment made by the District to the outstanding audited financial investment, including debt and equity, by private lenders and investors (for example the ratio of the anticipated initial investment by the District of ten million dollars (\$10,000,000) to the anticipated initial investment by lenders and investors of sixty-five million dollars (\$65,000,000) would be 1 to 6.5 (“District proportion”), to the extent that the transfer shall not compromise the rights or legal interests of the New Markets Tax Credits investors and allocatees.

### 3599 DEFINITIONS

3599.1 When used in this chapter, the following words and phrases shall have the meanings ascribed below:

**501(c)(3) organization** – an organization that is tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1986, approved August 6, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3)).

**Act** - the Workforce Housing Production Program Approval Act of 2006, effective March 14, 2007 (D.C. Law 16-278; D.C. Official Code §§ 6-1061.01 *et seq.*).

**Affordable** or **affordability** – with respect to the purchase price for a housing unit, a purchase price that has been established so that an eligible household’s front end ratio will be no more than thirty-five percent (35%).

**Area median income** – the same meaning as set forth in section 2 of the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2801).

**Community Development Financial Institutions Fund** – the fund established under section 104(a) of the Community Development Banking and Financial Institutions Act of 1994, approved September 23, 1994 (103 P.L. 325; 12 USCS § 4703).

**Comprehensive Housing Task Force Fund** – the Comprehensive Housing Task Force Fund established by section 2052(a) of the Deed Transfer and Recordation Amendment Act of 2006, effective March 2, 2007 (D.C. Law 16-192; D.C. Official Code § 42-2853.02(a)).

**Council** - the Council of the District of Columbia.

**Deputy Mayor** – the Deputy Mayor for Planning and Economic Development.

**Developer** – a business entity, either for-profit or not-for-profit, or an individual that constructs land trust housing units or acquires qualified housing units for conversion to land trust housing units, or proposes to engage in either activity.

**Development financing** - financing, including financing in the form of loans or equity, provided by the land trust to a developer for the purpose of constructing land trust housing units or acquiring qualified housing units for conversion into land trust housing units.

**Development financing commitment** - a commitment from the land trust that upon the performance by a developer of certain conditions set forth in the development financing commitment, the land trust will make development financing available to the developer.

**District** - the District of Columbia.

**Domestic partnership** – the same meaning as set forth in section 2(4) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(4)).

**Eligible household** - a household, which at the time of purchase of a qualified housing unit or land trust housing unit, has a total annual income at or below one hundred twenty percent (120%) of the area median income, or, if the household receives land trust financing provided through an allocation of funds from the Housing Production Trust Fund, a household which at the time of purchase of a qualified housing unit or land trust housing unit, has a total annual income at or below eighty percent (80%) of the area median income, adjusted for family size.

**Front end ratio** - total housing expenses (principal, interest, taxes, and insurance) divided by household income.

**Greater affordability** - to reduce the purchase price of a qualified housing unit or land housing unit so that an eligible household at a lower income is able to purchase the qualified housing unit or land trust housing unit than would have been able to purchase the housing unit if the reduction of the purchase price had not occurred.

**High poverty census tract** - a census tract with a poverty rate of thirty percent (30%) or greater as defined by the United States Census Bureau.

**Household** - all persons who occupy a housing unit, which persons may be a single family, one (1) person living alone, two (2) or more families living together, or any other group of related or unrelated persons who share living arrangements.

**Housing Production Trust Fund** – the Housing Production Trust Fund established by the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code §§ 42-2801 *et seq.*).

**Housing unit** - a single family home, a fee simple unit in a condominium, or occupancy rights in a cooperative.

**Individual financing** – financing, including a second mortgage loan or the provision of equity, provided by the land trust to an eligible household to purchase a qualified housing unit or land trust housing unit.

**Land trust** - the organization selected by the Mayor's delegee to administer the program pursuant to section 102(g) of the Act (D.C. Official Code § 6-1061.02(g)).

**Land trust agreement** – the agreement required by subsection 3501.2.

**Land trust financing** – development financing or individual financing.

**Land trust homeowner** – a person that owns a land trust housing unit.

**Land trust housing unit** – a housing unit that has been assisted by land trust financing.

**Land trust program** - the operation and administration of a program to create a portfolio of housing units that are affordable to eligible households in perpetuity pursuant to the Workforce Housing Production Program Approval Act and to develop one thousand (1,000) units of workforce housing within three (3) years after the effective date of the Act.

**Land trust portfolio** – the portfolio consisting of all land trust housing units.

**Low income** – having an income at or below eighty percent (80%) of the area median income, adjusted for family size.

**Mayor** - the Mayor of the District of Columbia.

**Mayor's delegee** – the District government official to whom the Mayor has delegated the authority to perform any function authorized to be performed by the Mayor under title I of the Act

**Moderate income** - having an income at or below one hundred twenty percent (120%) of the area median income, adjusted by family size.

**New Markets Tax Credit** – the tax credit established under section 45D of the Internal Revenue Code of 1986, approved December 21, 2000 (106 P.L. 554; 26 USCS § 45D).

**Permanent or permanently** - in perpetuity.

**Plan** - the District of Columbia Workforce Housing Land Trust Design and Implementation Plan, as approved by the Council pursuant to section 103 the Act (D.C. Official Code § 6-1061.03).

**Portfolio average of household incomes** - the average of the household incomes established at the time of purchase for all of the households that own qualified housing units.

**Portfolio average of housing unit purchase prices** – the average of the most recent purchase price for each land trust housing unit in the land trust portfolio.

**Poverty census tract** - a census tract with a poverty rate of twenty (20%) percent or greater as defined by the United States Census Bureau.

**Qualified housing unit** - a housing unit affordable to a household with an income of 120% or less of the area median income.

**Very low income** - having an annual income at or below fifty percent (50%) of the area median income, adjusted for family size.

## 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)(2006 Supp.)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the intent to take final rulemaking action to adopt the following amendments to Chapter 48 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 May 30, 2008, at 55 DCR 006166. These final rules will be effective upon publication of this notice in the *D.C. Register*.

**Chapter 48 (Chiropractic) of Title 17 (Business, Occupations & Professions) (May 1990) is amended as follows:**

**The Table of Contents is amended in its entirety to read as follows:**

Secs.	
4800	General Provisions
4801	Term of License
4802	Educational Requirements
4803	Licensure Requirements and Qualifications for Physiotherapy Ancillary Procedures Certification
4804	National Examination
4805	District Examination
4806	Continuing Education Requirements
4807	Approved Continuing Education Programs and Activities
4808	Continuing Education Credits
4809	Standards of Conduct
4810	Practice of Chiropractic Assistants
4811	Scope of Practice
4812	Vitamins and Minerals
4899	Definitions

**Section 4800 is amended in its entirety to read as follows:**

<b>4800</b>	<b>General Provisions</b>
4800.1	This chapter shall apply to applicants for and holders of a license to practice chiropractic.
4800.2	Chapters 40 (Health Occupations: General Rules) and 41 (Health Occupations: Administrative Procedures) of this title shall supplement this Chapter.

4800.3 Notwithstanding anything in Chapter 40 to the contrary, the Board shall only accept applications for licensure by one of the following means:

(a) Examination;

(b) Reactivation of an inactive license;

(c) Reinstatement of an expired, suspended, or revoked license; or

(d) Reciprocity pursuant to § 4014.

4800.4 An applicant for a license to practice chiropractic shall submit with a complete application three (3) letters from chiropractors licensed in a jurisdiction of the United States in good standing who have personal knowledge of the applicant's abilities and qualifications to practice chiropractic.

**Section 4801 is amended in its entirety to read as follows:**

**4801 Term of License**

4801.1 Subject to § 4801.2, a license issued pursuant to this chapter shall expire at 12:00 midnight of December 31<sup>st</sup> of each even-numbered year.

4801.2 If the Director changes the renewal system pursuant to § 4006.3 of Chapter 40 of this title, a license issued pursuant to this chapter shall expire at 12:00 midnight of the last day of the month of the birth date of the holder of the license, or other date established by the Director.

**Section 4802 is amended in its entirety to read as follows:**

**4802 Educational Requirements**

4802.1 Except as otherwise provided in this subtitle, an applicant shall furnish proof satisfactory to the Board, in accordance with § 504(b) of the Act, (D.C. Official Code § 3-1205.04(b)) (2006 Supp.), that the applicant has met the following requirements:

(a) Has successfully completed two (2) years of education at the baccalaureate level at a college or university accredited at the time of the applicant's attendance by the Secretary of the United States Department of Education or the Council on Postsecondary Education; and

(b) Has graduated from an educational program in the practice of chiropractic that:

(1) Consists of four (4) academic years of study;

(2) Includes five hundred (500) hours of practical clinical experience under the supervision of a chiropractor; and

(3) Is accredited at the time of the applicant's graduation by:

(A) The Council on Chiropractic Education (CCE); or

(B) The Straight Chiropractic Academic Standards Association (SCASA); or

(C) Any other specialized chiropractic accrediting agency listed with the U.S. Department of Education.

4802.2 An applicant shall submit with a completed application a certified transcript from educational institution(s) to the Board.

**Section 4803 is amended in its entirety to read as follows:**

**4803 Licensure Requirements and Qualifications for Physiotherapy Ancillary Procedures Certification**

4803.1 An applicant who has completed educational requirements may apply for licensure in the District of Columbia in the following manner:

(a) If the applicant graduated prior to September 1987 the applicant shall have successfully passed parts 1 and 2 of the national exam; or

(b) If the applicant graduated prior to January 1, 1996, but after September 1987, the applicant shall have successfully passed parts 1, 2, and 3 of the national examination; or,

(c) The applicant shall successfully pass the District of Columbia Chiropractic Exam and/or the National Boards SPEC Exam at the discretion of the D.C. Board of Chiropractic.

4803.2 An applicant applying for licensure under this section shall also comply with § 4805.1.

4803.3 In addition to the requirements provided in § 4802 for licensure, a chiropractor shall satisfy the following requirements to qualify for physiotherapy ancillary procedures certification:

(a) Achieve a passing score in Physical Therapy equal to or greater than the score recommended by the NBCE as a passing score; and

(b) Achieve a score of seventy-five percent (75%) on an examination administered by the D.C. Board of Chiropractic, which tests the applicant's knowledge and physical skills in physiotherapy.

**Section 4805 is amended in its entirety to read as follows:**

**4805 District Examination**

4805.1 To qualify for a license under this chapter, an applicant, without exception, shall receive a passing score on the written and practical examination developed by the Board (the District examination) in the following areas:

(a) Technique;

(b) X-ray interpretation and diagnosis;

(c) Physical examination including neurological and orthopedic diagnostic testing;

(d) Instrumentation;

(e) Chiropractic philosophy;

(f) Diet;

(g) Exercise;

(h) Stress; and

(i) District law.

- 4805.2 An applicant who passes part 4 of the National Exam shall be waived by the Board from taking the following parts of the District examination:
- (a) Technique;
  - (b) X-ray interpretation and diagnosis; and
  - (c) Physical examination including neurological and orthopedic diagnostic testing.
- 4805.3 An applicant shall pass all parts of the national examination to be eligible to take the District examination, except as specified in section 4803.1.
- 4805.4 The District examination may include questions on the following:
- (a) The District of Columbia Health Occupations Revision Act of 1985, D.C. Law 6-99, D.C. Official Code § 3-1201.01 et seq. (2001);
  - (b) Title 17 Chapter 48 of the District of Columbia Municipal Regulations; and
  - (c) Title 17 Chapters 40 and 41 of the District of Columbia Municipal Regulations
- 4805.5 The Board shall supply each applicant for examination by the Board with copies of the laws and rules on which the applicant will be tested thirty (30) days prior to the examination, unless waived by the applicant.
- 4805.6 A passing score on the District examination shall be seventy-five percent (75%) on each test that forms a part of examination.
- 4805.7 Pursuant to the Health Occupations Revisions Act of 1985, an applicant approved for an initial license to sit for the next scheduled exam may request the Board's permission to practice under the supervision of a District licensed chiropractor until results of the exams are posted.

Section 4806 is amended in its entirety to read as follows:

**4806 Continuing Education Requirements**

- 4806.1 Subject to § 4806.2, this section shall apply to applicants for the renewal, reactivation, or reinstatement of a license.

- 4806.2 This section shall not apply to applicants for an initial license by examination, nor shall it apply to applicants for the first renewal of a license granted by examination.
- 4806.3 A continuing education credit shall be valid only if it is part of a program specified in § 4807.
- 4806.4 An applicant for renewal of a license shall submit proof upon request of the Board pursuant to § 4806.7 of having completed twenty-four (24) hours of approved continuing education credit during the two-year (2) period preceding the date the license expires.
- 4806.5 To qualify for a license, a person in inactive status within the meaning of § 511 of the Act, D.C. Official Code § 3-1205.11 (2001), who submits an application to reactivate a license shall submit proof pursuant to § 4806.7 of having completed twelve (12) hours of approved continuing education credit for each license year after December 31, 1990, that the applicant was in inactive status.
- 4806.6 To qualify for a license, an applicant for reinstatement of a license shall submit proof pursuant to § 4806.7 of having completed twelve (12) hours of approved continuing education credit for each year that the license was expired.
- 4806.7 At the request of the Board, an applicant under this section shall prove completion of required continuing education credits by submitting with the application the following information with respect to each program:
- (a) The name and address of the sponsor of the program;
  - (b) The name of the program, its location, a description of the subject matter covered, and the names of the instructors;
  - (c) The dates on which the applicant attended the program;
  - (d) The hours of credit claimed; and
  - (e) Verification by the sponsor of completion by signature or stamp.
- 4806.8 An applicant for renewal of a license who fails to submit proof of having completed continuing education requirements by the date the license expires may

renew the license up to sixty (60) days after expiration by submitting proof pursuant to § 4806.7 and by paying the required additional late fee.

- 4806.9 Upon submitting proof and paying the late fee, the applicants shall be deemed to have possessed a valid license during the period between the expiration of the license and the submission of the required documentation and payment of the late fee.
- 4806.10 If an applicant for renewal of a license fails to submit proof of completion of continuing education requirements as requested by the Board or pay the late fee within sixty (60) days after the expiration of applicant's license, the license shall be considered to have lapsed on the date of expiration.
- 4806.11 The Board may, in its discretion, grant an extension of the sixty (60) day period to renew after expiration if the applicant's failure to submit proof of completion was for good cause. For purposes of this section, "good cause" includes the following:
- (a) Serious and protracted illness of the applicant;
  - (b) The death or serious and protracted illness of a member of the applicant's immediate family.

**Section 4807 is amended in its entirety to read as follows:**

**4807 Approved Continuing Education Programs and Activities**

- 4807.1 The Board shall accept for credit continuing education programs provided or sponsored by the following:
- (a) A chiropractic college accredited by the CCE;
  - (b) The America Chiropractic Association;
  - (c) The Federation of Straight Chiropractic Organizations;
  - (d) The International Chiropractors Association; or
  - (e) Approved by the District of Columbia Board of Chiropractic.

**Section 4809 is amended in its entirety to read as follows:**

**4809 Standards of Conduct**

- 4809.1 A licensee shall not engage in sexual conduct with a patient with whom he or she has a patient-chiropractor relationship.
- 4809.2 A patient-chiropractor relationship exists unless:
- (a) Professional services are terminated and the patient receives written notice of the termination, whether the termination was initiated by the patient or licensee;
  - (b) The patient has been appropriately referred to another health professional in writing;
  - (c) The patient has accepted treatment by another health professional and the licensee documents the patient's chart prior to closing the file; or
  - (d) The patient has not received professional services for six (6) consecutive months and has not contacted the chiropractor for treatment.
- 4809.3 Sexual conduct includes the following:
- (a) Any behavior, gestures, or verbal or nonverbal expressions, which may reasonably be interpreted as seductive or sexual in nature; and
  - (b) Sexual comments or discussion about a patient or a former patient that are not related to chiropractic care or treatment.
- 4809.4 A patient shall be provided with a private treatment room, as well as examination conditions, which prevent the exposure of the unclothed body of the patient unless it is necessary for the chiropractic exam or treatment.
- 4809.5 A licensee shall not engage in sexually harassing behavior in the practice of chiropractic of a single extreme act or multiple acts toward a patient, coworker, employee, student or supervisee whether or not such individual is in a subordinate position to the licensee or not.
- 4809.6 A licensee may have a chiropractor-patient relationship with a spouse, family member or an individual with whom he or she has a mutually committed relationship and perform chiropractic treatment, provided the treatment is within

accepted standards of chiropractic care and the performance of the services are not utilized to exploit the patient for sexual arousal or sexual gratification.

- 4809.7 A licensee shall not seek or solicit sexual contact with a patient with whom he or she has a patient-chiropractic relationship or in exchange for professional services.
- 4809.8 A licensee may not raise the following defenses to any action under this section:
- (a) The licensee was in love with or had affection for the patient; and
  - (b) The patient solicited or consented to the sexual contact with the licensee.
- 4809.9 A licensee shall exercise independent professional judgment in the treatment or evaluation of the patient regardless of whether the patient was referred by another healthcare provider.
- 4809.10 A licensee shall not advertise free or discounted services.
- 4809.11 A licensee shall prepare a written or verbal report for consultative purposes for another chiropractor, another healthcare provider, hospital or agency that currently provides or has provided service to the patient upon request.
- 4809.12 A licensee shall terminate a professional relationship with a patient shall in an appropriate and timely manner so as not to adversely impact the health of the patient.
- 4809.13 A licensee shall continue a professional relationship for emergency treatment with a current patient for a reasonable period of time to allow the patient time to obtain another healthcare provider.
- 4809.14 A licensee shall arrange for adequate coverage of his or her patients during absences when the chiropractor is unavailable to the patients.
- 4809.15 A licensee shall not:
- (a) Accept a patient for treatment or continue with treatment when the treatment is unnecessary and the patient cannot be reasonably expected to benefit from treatment within normal standards of chiropractic care and consistent with the treatment philosophy of the treating chiropractor.

(b) Attempt to treat or make misrepresentations about his or her ability to treat patients beyond his or her scope of expertise and/or area of specialty certification.

(c) Refer a patient to a diagnostic or treatment facility or prescribe goods and services to be purchased from another facility, in which the chiropractor has a pecuniary interest, without first disclosing that interest in writing to the patient or third party payor.

**Section 4810 is amended in its entirety to read as follows:**

**4810 Practice of Chiropractic Assistants**

4810.1 A chiropractic assistant may perform the following under the supervision of a licensed doctor of chiropractic:

(a) Case histories, if properly trained by the supervising chiropractor;

(b) Diagnostic testing, but must have specialized training by a program or institution listed in section 4807.1;

(c) Therapeutic ancillary procedures, but must have specialized training by a program or institution listed in section 4807.1, and in addition, have specific written instructions from the supervising licensed chiropractor with ancillary privileges; and

(d) The taking of x-rays, but must have specialized training by a program or institution listed in section 4807.1, and in addition, have specific written instructions from the supervising licensed chiropractor.

4810.2 A chiropractic assistant may not perform the following:

(a) Any tasks requiring manipulative or adjustment techniques;

(b) The rendering of diagnostic results or interpretations; or

(c) Giving treatment advice without direct written orders from the Doctor of Chiropractic.

4810.3 A licensed doctor of chiropractic shall be fully responsible for all of the actions performed by the chiropractic assistant during the time of the supervision and is subject to disciplinary action for any violation of the Act or this chapter by the person supervised.

**Section 4811 is amended in its entirety to read as follows:**

**4811 Scope of Practice**

4811.1 A chiropractor who is licensed to practice in the District of Columbia under the provisions of this chapter may provide the following chiropractic services:

(a) Locating, diagnosing, and analyzing subluxated vertebrae as follows:

(1) By x-ray of the spinal column;

(2) By physical examination; and

(3) By employing other non-invasive procedures such as MRI and CAT scan;

(b) Correcting vertebral subluxation displacement by applying specific localized force to the spine;

(c) Advising patients about diet, exercise and stress;

(d) Referring patients for specialized diagnostic testing, which may be necessary for chiropractic treatment or patient safety;

(e) Referring patients to other healthcare practitioners as deemed necessary by the chiropractor; and

(f) Diagnosing and treating bodily articulations by means of manipulation or adjustments.

4811.2 A chiropractor who is certified by the Board to perform ancillary procedures pursuant to § 4803.3 may perform any physiotherapy for which the chiropractor has received specialized training at a program or institution listed in § 4807.1 as long as the physiotherapy is preparatory and complementary to chiropractic care.

**Section 4899 is amended in its entirety to read as follows:**

**4899 Definitions**

4899.1 For purposes of this chapter, the following terms shall have the meanings ascribed:

**Ancillary**- any physiotherapy procedure used on a patient prior to, and complimentary to, receiving a chiropractic treatment.

**Applicant** - A person applying for a license to practice chiropractic or certification to practice ancillary procedures under this chapter.

**Board** - The D.C. Board of Chiropractic, established by § 216 of the Health Occupations Revision Act, D.C. Official Code § 3-1202.16 (2001).

**CAT scan** - A diagnostic, medical, radiological scan in which cross-sectional images of a part of the body are formed through computerized axial tomography and shown on a computer screen.

**Chiropractor** - A person licensed to practice chiropractic under the Health Occupations Revision Act, D.C. Official Code § 3-1205.01 et seq. (2001).

**MRI** - An imaging technique that uses electromagnetic radiation to obtain images of the body's soft tissues by subjecting the body to a powerful magnetic field, allowing tiny signals from atomic nuclei to be detected and then processed and converted into images by a computer.

**NBCE** - The National Board of Chiropractic Examiners.

**Physiotherapy**- any external modality that the chiropractor uses on a patient prior to receiving a chiropractic adjustment / manipulation, that creates a physiological change in the human tissue condition, and that contributes to the overall improvement of the condition for which the patient is being treated.

**Spinal adjustment/manipulation** - A specific thrust applied to a subluxated vertebra utilizing parts of the vertebra and contiguous structures as levers to directionally correct that particular articular malposition, and thus influencing neural integrity in that area.

**Subluxation** - A complex of functional and/or structural changes that occur in the spinal column that compromises neural integrity and thus may influence organ system function and general health.

**Supervision**- Having a licensed District of Columbia chiropractor in the same office on a continuous basis while the assistant is on duty. The supervising chiropractor should be immediately available for delegated acts that the chiropractic assistant performs. Telecommunication is insufficient for supervision purposes or as a means for directing delegated acts.

4899.2 The definitions in § 4099 of Chapter 40 of this title are incorporated by reference into and apply to this chapter, except that the definition of "Board" shall mean the D.C. Board of Chiropractic.

**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 D.C. Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C Official Code § 3-1203.02(14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the intent to adopt the following amendments to chapter 67 of Title 17 of the District of Columbia Municipal Regulations (DCMR). The Proposed Rulemaking was published on May 30, 2008 at 55 DCMR 006179. No comments were received and no changes have been made to the proposed rulemaking. These final rules will become effective upon publication of this notice in the D.C. Register.

**Chapter 67 (Physical Therapy) of Title 17 (Business, Occupations & Professions) is amended as follows:**

**Section 6710.8 is amended to read as follows:**

6710.8           A physical therapist assistant shall use the letters "PTA" in connection with his or her name.

**Section 6710.10 is amended to read as follows:**

6710.10           A physical therapist shall assure the qualifications of all physical therapy students, physical therapist assistants, physical therapist aides, and first-time applicants practicing pursuant to § 6711, under his or her direction and supervision.

**Section 6710.11 is amended to read as follows:**

6710.11           A physical therapist may not have more than a total of three (3) physical therapy students or physical therapist aides or physical therapist assistants or first-time applicants for a physical therapy license practicing pursuant to § 6711, under his or her direct supervision at any one time.

**New subsections 6710.14, 6710.15, 6710.16, 6710.17, 6710.18 and 6710.19 are added to read as follows:**

6710.14           A licensed physical therapist shall perform the final evaluation for a patient who has been treated throughout the patient's history by a physical therapist assistant.

6710.15           A physical therapist shall ensure the qualifications of all physical therapist assistants under his or her supervision.

- 6710.16 Before a patient is treated by a physical therapist assistant, a licensed physical therapist shall evaluate the patient and formulate initial and ongoing treatment goals and plans.
- 6710.17 Pursuant to § 6710.16, a licensed physical therapist shall reevaluate each patient being treated by a physical therapist assistant by the seventh (7<sup>th</sup>) visit and every seventh (7<sup>th</sup>) visit thereafter.
- 6710.18 Support personnel shall only perform routine assigned tasks under the direct supervision of a licensed physical therapist or a licensed physical therapist assistant, who shall only assign those tasks or activities that are nondiscretionary and do not require the exercise of professional judgment.
- 6710.19 A licensed physical therapist shall be fully responsible for any actions by a physical therapist assistant performing physical therapist functions while under the physical therapist's supervision.

**Section 6712 is amended to read as follows:**

**6712 PHYSICAL THERAPIST ASSISTANTS AND AIDES**

- 6712.1 A physical therapist assistant or physical therapist aide may perform physical therapy functions only in accordance with this section.
- 6712.2 A physical therapist assistant may perform the following functions under the direct supervision of a physical therapist:
- (a) Use of therapeutic exercise, mechanical traction, therapeutic massage, compression, heat, cold, ultraviolet, water, and electricity;
  - (b) Measurement and adjustment of crutches, canes, walkers, and wheelchairs, and instruction in their use and care;
  - (c) Instruction, motivation, and assistance to patients and others in improving pulmonary function, learning, and functional activities such as pre-ambulation, transfer, ambulation and daily living activities; and the use and care of orthoses, prostheses, and supportive devices;
  - (d) Modification of treatment procedures as indicated by patient response and within the limits specified in the plan of care, and reported orally or in writing to the physical therapist; and

- (e) Participation in routine administrative procedures required for a physical therapy service.
- 6712.3 A physical therapist aide may perform the following functions under the direct supervision of a physical therapist:
- (a) Gait practice;
  - (b) Activities of daily living;
  - (c) Transfer activities;
  - (d) Hot or cold packs;
  - (e) Paraffin bath;
  - (f) Hydrotherapy;
  - (g) Whirlpool; and
  - (h) Therapeutic exercises.
- 6712.4 A physical therapist assistant or physical therapist aide may not perform the following:
- (a) Interpret referrals;
  - (b) Perform evaluation procedures;
  - (c) Initiate or adjust treatment programs; or
  - (d) Assume responsibility for planning patient care.
- 6712.5 Pursuant to § 6710.12, a physical therapist shall review and co-sign any documentation written by a physical therapist assistant or physical therapist aide.

**Section 6799 is amended as follows:**

**The definition of “direct supervision” is amended to read as follows:**

**Direct supervision** - the supervision in which a physical therapist is personally present and immediately available within the treatment area to give aid, direction, and instruction when physical therapy procedures or

activities are performed

**The definition of “physical therapy aide” is amended to read as follows:**

**Physical therapist aide** - a person trained by a physical therapist to perform designated routine tasks related to the operation of a physical therapy service under the direct supervision of a physical therapist.

**The definition of “physical therapy assistant” is amended to read as follows:**

**Physical therapist assistant** – a physical therapy assistant who is a person licensed to practice under the Act.

**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 Title IX of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-609.01 *et seq.*) (2006 Repl. and 2007 Supp.), hereby gives notice that final rulemaking action was taken to adopt the following rules. These rules amend Chapter 9, Excepted Service, of Title 6 of the District of Columbia Municipal Regulations (DCMR), for the main purpose of: (1) adding language to section 907.3 of the chapter to address Excepted Service positions with a term of years established by statute, including provisions on minimal due process rights when removal of an individual in such a position is contemplated; and (2) adding a new section 910, *Special Consideration for Placement and Advancement*, to the chapter. New section 910 provides that graduates of the District government's Certified Public Manager Program; and persons appointed as Capital City Fellows (upon completion of the two-year (2-year) Program) shall be referred to selecting officials in subordinate agencies for interview by management and special consideration for placement and advancement for Excepted Service positions they qualify for. Additionally, various portions of sections 900 through 909, 911 through 915, and 920 are being amended, including a change to the heading of sections 902, 903, 906, and 909; and section 999, *Definitions*, is being amended to add definitions to the terms "break in service," "disciplinary reasons," "intermittent employment," and "temporary employment;" and amend the definition of the terms "consultant," "consultant position," "Excepted Service," "expert," "expert position," "performance contract," and "personnel authority." No comments were received and no changes were made under the notice of proposed rulemaking published on May 30, 2008 (55 DCR 6183). Final rulemaking action was taken on July 10, 2008.

**CHAPTER 9****EXCEPTED SERVICE**

*Chapter 9 of the D.C. Personnel Regulations is amended as follows:*

*Section 900 is amended to read as follows:*

**900 APPLICABILITY AND AGE REQUIREMENTS**

900.1 This chapter applies to all appointments in the Excepted Service under the authority of Title IX 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 § 1-609.01 *et seq.*) (2006 Repl. and 2007 Supp.).

- 900.2 Unless otherwise required by law, all Excepted Service appointees, other than persons appointed under the authority of section 904 of the CMPA (D.C. Official Code § 1-609.04) (2007 Supp.), shall serve at the pleasure of the appointing personnel authority.
- 900.3 The minimum age for employment in the Excepted Service, unless a different age requirement is specifically provided by law for a particular appointment or position, is sixteen (16) years, except that the minimum age for any junior youth aide in the Department of Parks and Recreation and for summer employment is fourteen (14) years for a person appointed to a transitional position.

*Section 901 is amended to read as follows:*

## **901 EXCEPTED SERVICE CLASSIFICATION SYSTEM AND STANDARDS**

- 901.1 Notwithstanding the provisions in section 903 of this chapter on the establishment of the new Excepted Service Pay Schedule, the classification system or systems in effect on December 31, 1979 shall remain in effect until the adoption of a new classification system or systems pursuant to section 1102 of the CMPA (D.C. Official Code § 1-611.02) (2006 Repl.), and shall be the system utilized to classify Excepted Service positions.
- 901.2 Each Excepted Service position shall be classified as prescribed in Chapter 11 of these regulations, except that:
- (a) Statutory positions shall be classified in a manner consistent with their governing statutes, as appropriate; and
  - (b) The personnel authority may adjust the grade, pay level, or salary, as applicable, of a position, to reflect the professional, scientific, or technical stature of an individual appointed as an expert or consultant.

*The heading of section 902 is changed from "Excepted Service Qualification Standards;" and the section is amended as follows:*

## **902 EXCEPTED SERVICE QUALIFICATIONS AND OTHER APPOINTMENT REQUIREMENTS**

*Section 902.1 is amended to read as follows:*

- 902.1 A person appointed to an Excepted Service position, other than an appointment to a statutory position, shall meet the minimum qualifications requirements for the position.

*Section 902.2 is deleted.*

*Sections 902.3 through 902.6 are renumbered as 902.2 through 902.5, respectively, and amended to read as follows:*

- 902.2 Employment in the Excepted Service shall comply with the Immigration Reform and Control Act of 1986, as amended, which requires that employers hire only citizens and

nationals of the United States and aliens authorized to work and verify the identity and employment eligibility of all employees hired after November 6, 1986.

- 902.3 Pursuant to section 408 of the CMPA (D.C. Official Code § 1-604.08) (2006 Repl.), each personnel authority shall designate a person to administer the oath of office to each new employee of an agency. The oath is as follows: “I, (employee’s name), do solemnly swear (or affirm) that I will faithfully execute the laws of the United States of America and of the District of Columbia, and will to the best of my ability, preserve, protect and defend the Constitution of the United States, and will faithfully discharge the duties of the office of which I am about to enter.”
- 902.4 The personnel authority shall determine whether an applicant or appointee is or has been involved in any activities that constitute a reasonable basis for concluding that the candidate would not faithfully discharge the duties of the position for which he or she is being considered.
- 902.5 For purposes of this chapter, a person who advocates the overthrow of the governments of the United States or the District of Columbia by unconstitutional means shall be considered unsuitable for employment with the District government.

*The heading of section 903 has been changed from “Excepted Service Pay Plan,” and the section amended as follows:*

**903 PAY PLAN AND PAY-FOR-PERFORMANCE SYSTEM FOR THE EXCEPTED SERVICE**

*Sections 903.1 through 903.5 are amended to read as follows:*

- 903.1 An Excepted Service Pay Schedule (“ES Schedule”) has been established as the basic pay schedule for all Excepted Service positions. The ES Schedule, which was approved on July 6, 2005 by Council Resolution No. 16-219, is a merit-based pay plan that provides for market competitive open-salary ranges with progression based on performance, and replaces the salary schedule structure for Excepted Service positions consisting of pay levels and ten (10) steps.
- 903.2 The structure and application of the ES Schedule provides flexibility in hiring and compensation for Excepted Service positions. Some of the features of a merit-based pay plan such as the new ES Schedule are:
- (a) Merit pay or pay for performance systems provide the flexibility to:
    - (1) Combine merit or performance-based increases with what is commonly known as “cost-of-living-adjustments” or “market adjustments;” or
    - (2) Base the total salary increase the employee receives solely on merit (performance);
  - (b) Base-pay increases vary in direct relationship to each employee’s performance level;

- (c) The system differentiates between various levels of performance and rewards employees through additional compensation accordingly;
  - (d) Success of the system depends on accurate and realistic performance evaluations by supervisors; and
  - (e) The system provides flexibility for varying budget constraints and revenues.
- 903.3 The ES Schedule is divided into eleven (11) pay levels (ES 1 through ES 11). Each pay level has an open range with a “minimum,” “midpoint,” and “maximum” as reference points of the range.
- 903.4 Application of the ES Schedule shall ensure compliance with the principle of equal pay for substantially equal work contained in section 1103 (a)(2) of the CMPA (D.C. Official § 1-611.03 (a)(2)) (2006 Repl.).
- 903.5 As appropriate, Excepted Service employees paid under the ES Schedule shall be treated as employees in other services in applying other compensation regulations contained in Chapter 11 of these regulations that may be applicable to that service.

*Sections 903.6 and 903.7 are deleted.*

*Sections 903.8 through 903.13 are renumbered as 903.6 through 903.11, respectively, and amended to read as follows:*

- 903.6 Eligible employees paid under the ES Schedule shall not receive more than one (1) salary increase in a calendar year (annual salary increase). Sections 903.7 through 903.10 of this section explain the eligibility requirements and conditions for annual pay-for-performance salary increases for employees paid from the ES Schedule.
- 903.7 Except as otherwise determined by the Mayor (or designee), or personnel authority, annual salary increases for employees paid under the ES Schedule shall become effective on the last full biweekly pay period in the calendar year (pay period number twenty-six (26)), or pay period number twenty-seven (27), as may occur from time to time); provided that the following eligibility requirements are met:
- (a) The employee received a Performance Plan for the year; and
  - (b) The employee’s level of competence and job performance is determined to be acceptable or better, as evidenced by a performance rating of “*Meets Expectations*” or higher, for Excepted Service employees whose performance is rated using the PMP in Chapter 14 of these regulations.
- 903.8 For the purposes of sections 903.6 and 903.10 of this section, the term “salary increase” shall have the following meaning:
- (a) A market adjustment;

- (b) A merit-pay increase based on performance as specified in section 903.7 (a) of this section; or
  - (c) A market adjustment, plus a merit-pay increase based on performance as specified in section 903.7 (a) of this section combined.
- 903.9 Each personnel authority, in consultation with the Office of the Chief Financial Officer, shall:
- (a) Plan for and determine the payroll cost of salary increases every year for agency Excepted Service employees who meet the requirements in section 903.7 (a) and (b) of this section;
  - (b) Determine the total percentage of the annual salary increases for these employees; and
  - (c) Communicate the plan to agency heads every year.
- 903.10 An eligible Excepted Service employee whose salary is at the top of the range for the pay level of the position he or she occupies and who meets the requirements in section 903.7 (a) and (b) of this section, shall receive a one-time (1-time) lump sum payment for the calendar year in question, the amount of which shall not exceed the total percentage afforded to other eligible agency employees with the same performance rating.
- 903.11 The Director, D.C. Department of Human Resources, shall determine the salary levels for Capital City Fellows assigned to subordinate agencies.

*Sections 903.14 and 903.15 are renumbered as 903.12 and 903.13, respectively:*

- 903.12 The salary of an employee paid under the ES Schedule may be reduced for unacceptable performance or for misconduct that does not warrant separation.
- 903.13 Nothing in this section shall prevent Excepted Service employees paid under the ES Schedule from receiving performance incentives and incentives awards in accordance with section 912 of this chapter and Chapter 19 of these regulations.

*Section 904 is amended as follows:*

#### **904 EXCEPTED SERVICE POSITIONS**

*Section 904.1 is amended to read as follows:*

- 904.1 The following types of positions are considered Excepted Service positions:
- (a) Excepted Service statutory positions include positions occupied by employees who, pursuant to section 908 of the CMPA (D.C. Official Code § 1-609.08) (2006 Repl.), serve at the pleasure of the appointing authority; or who, as provided by other statute, serve for a term of years subject to removal for cause as may be

provided in the appointing statute. Among the Excepted Service statutory positions listed in section 908 of the CMPA are the following:

- (1) The City Administrator;
  - (2) The Director of Campaign Finance, District of Columbia Board of Elections and Ethics;
  - (3) The Auditor of the District of Columbia;
  - (4) The Chairman and members of the Public Service Commission;
  - (5) The Executive Director of the Public Employee Relations Board;
  - (6) The Chief Administrative Law Judge, Administrative Law Judges, and Executive Director of the Office of Administrative Hearings; and
  - (7) The Chief Tenant Advocate of the Office of the Tenant Advocate.
- (b) Positions created under public employment programs established by law, pursuant to section 904 (1) of the CMPA (D.C. Official Code § 1-609.04 (1)) (2007 Supp.).
- (c) Positions established under special employment programs of a transitional nature designed to provide training or job opportunities for rehabilitation purposes, including persons with disabilities, ex-offender or other disadvantaged groups, pursuant to section 904 (2) of the CMPA (D.C. Official Code § 1-609.04 (2)) (2007 Supp.).
- (d) Special category positions established pursuant to section 904 (3), (4), and (5) of the CMPA (D.C. Official Code § 1-609.04 (3), (4), and (5)) (2007 Supp.), specifically:
- (1) Positions filled by the appointment of a federal employee under the mobility provisions of the Intergovernmental Personnel Act of 1970, approved January 5, 1971 (P.L. 91-648; 84 Stat. 1909; 5 U.S.C. § 3301 *et seq.*);
  - (2) Positions established under federal grant-funded programs that have a limited or indefinite duration and are not subject to state merit requirements by personnel authorities; excluding employees of the Board of Education or of the Trustees of the University of the District of Columbia; and
  - (3) Positions established to employ professional, scientific, or technical experts or consultants.
- (e) Positions established under cooperative educational and study programs pursuant to section 904 (6) of the CMPA (D.C. Official Code § 1-609.04 (6)) (2007 Supp.),

including but not limited to positions established under a pre-doctoral or post-doctoral training program under which employees receive a stipend; positions occupied by persons who are graduate students under temporary appointments when the work performed is the basis for completing certain academic requirements for advanced degrees; and positions established under the Capital City Fellows program administered by the D.C. Department of Human Resources.

- (f) Excepted Service policy positions under section 903 (a) of the CMPA (D.C. Official Code § 1-609.03 (a)) (2007 Supp.) are positions reporting directly to the head of the agency, with primary duties of a policy determining, confidential, or policy advocacy character, and shall consist of the following:
- (1) Positions on the staff of the Mayor and paid from funds appropriated for the Office of the Mayor;
  - (2) Not more than two hundred twenty (220) positions in subordinate agencies as designated by the Mayor, sixty (60) of which may be allotted to and designated by the Office of the Inspector General and, in a control year, up to twenty (20) shall be allocated to and designated by the Office of the Chief Financial Officer;
  - (3) All positions occupied by employees of the Council of the District of Columbia, except those permanent technical and clerical employees appointed by the Secretary or General Counsel, and those in the Legal Service;
  - (4) The District of Columbia Auditor may designate four (4) positions;
  - (5) Not more than twenty-five (25) positions selected by the D.C. Public Schools;
  - (6) Positions occupied by persons appointed by the Board of Trustees of the University of the District of Columbia as officers of the University, those who report directly to the President, those who head major units of the University, academic administrators, and persons in a confidential relationship to the foregoing, exclusive of those appointed under section 801 (a) of the CMPA (D.C. Official Code § 1-608.01 (a)) (2007 Supp.);
  - (7) Not more than six (6) persons appointed by the District of Columbia Lottery and Charitable Games Control Board who report directly to either the Executive Director or Deputy Director, or who head major units of the Board;
  - (8) In addition to the two hundred twenty (220) positions under subsection 904.1 (f)(2) above, the Chief of Police may designate up to one percent (1%)

of the total number of authorized positions within the Metropolitan Police Department as Excepted Service policy positions, no more than ten (10) of which may be filled by sworn members or officers;

- (9) In addition to the two hundred twenty (220) positions under subsection 904.6 (f)(2) above, and notwithstanding any other law or regulation, the Chief of the Fire and Emergency Medical Services Department may designate up to eleven (11) positions as Excepted Service policy positions, no more than four (4) of which may be filled by sworn members;
- (10) All employees of the Criminal Justice Coordinating Council;
- (11) The District of Columbia Sentencing and Criminal Code Revision Commission may appoint six (6) persons; and
- (12) No more than two (2) positions selected by each other personnel authority not expressly designated in this section.

*Sections 904.2 through 904.6 are deleted.*

*A new section 904.2 is added to read as follows:*

904.2 The following shall apply to professional, scientific, or technical expert and consultant positions listed in subsection 904.1 (d)(3) of this section:

- (a) Persons serving in expert or consultant positions may be offered paid or unpaid employment; shall be qualified to perform the duties of the position; and the positions shall be bona-fide expert or consultant positions, as these terms are defined in section 999 of this chapter.
- (b) Experts and consultants may be employed under intermittent or temporary appointments not-to-exceed one (1) year; except that appointments may be renewed from year to year without limit on the number of reappointments, provided there is continued need for the services.
- (c) Hiring an expert or consultant to do a job that can be performed as well by regular employees, to avoid competitive employment procedures, or avoid District Service pay limits shall be considered improper uses of experts and consultants.
- (d) Persons employed as experts and consultants shall be subject to the domicile requirements specified in section 909 of this chapter and Chapter 3 of these regulations.

*Section 904.7 is renumbered as 904.3 and amended to read as follows:*

904.3 A statutory or policy position as described in subsection 904.1 (a) or subsection 904.1 (f)(1) through (12) of this section occupied by a person holding an appointment to an

attorney position shall be treated solely as a statutory or policy position, as the case may be.

*Section 905.3 is amended to read as follows:*

905.3 An appointment to a special category position under a federal grant-funded program shall be either for an indefinite period, or a time-limited appointment reflecting the duration of the grant.

*The heading of section 906 is changed from "Excepted Service Appointment of Persons from the Career or Educational Service;" and the section amended to read as follows:*

**906 EXCEPTED SERVICE APPOINTMENTS OF CAREER SERVICE OR EDUCATIONAL SERVICE EMPLOYEES**

906.1 Any person holding a position in the Career or Educational Services may be detailed, temporarily promoted, temporarily transferred, or temporarily reassigned, without a break in service, to a position that would otherwise be in the Excepted Service without losing his or her existing status in the Career or Educational Service.

906.2 Before making an appointment to a position in the Excepted Service as specified in section 906.1 of this section, the appointing personnel authority shall first inform the appointee, in writing, of the conditions of employment under the appointment, and that the appointee will not lose his or her existing status in the Career Service or Educational Service, as applicable. The appointee must accept or decline the appointment in writing.

906.3 Any person tendered an appointment to a position in the Excepted Service under this section who declines or refuses to accept such appointment shall continue to be subject to the rules applicable to the service in which he or she has existing status as provided in section 906.1 of this section.

906.4 The temporary nature of an appointment under this section shall be clearly stated and recorded on the appointing personnel action or actions. As a means of so stating, the appointing personnel authority may specify the anticipated duration of the appointment by including a not-to-exceed (NTE) date to the appointing personnel action(s). Additionally, the appointing personnel action(s) shall include remarks specifying all of the following:

- (a) The temporary nature of the appointment to the Excepted Service position;
- (b) That the appointee was informed in writing of the conditions of employment under the new appointment, and accepted the appointment;
- (c) That the appointee will not lose his or her existing status in the Career or Educational Service by accepting the temporary appointment to the Excepted Service position; and

- (d) That, upon termination of the temporary appointment to the Excepted Service position, the appointee is entitled to be returned to the Career or Educational Service position he or she occupied prior to the temporary assignment, or to an equivalent position.

*Section 907 is amended to read as follows:*

**907 EMPLOYEE RIGHTS**

- 907.1 A person appointed to a position in the Excepted Service shall not acquire permanent career status.
- 907.2 A person appointed to the Excepted Service shall serve at the pleasure of the appointing personnel authority; may be terminated at any time, with or without a stated reason, except as provided in this section; and does not have any right to appeal the termination.
- 907.3 (a) A person serving in an Excepted Service statutory position who is appointed in accordance with a law that provides for a term of years subject to removal for cause may be removed only as provided for in the applicable law.
- (b) If the law that provides for a term of years does not specify what the procedure for the removal of the incumbent shall consist of, the appointing authority shall satisfy the incumbent's minimal due process rights by affording the incumbent some type of pre-discharge opportunity to respond to the grounds for the proposed removal. At the pre-removal stage, these minimal due process rights generally include: specific charges; legal notice to the affected incumbent; a reasonable opportunity for the individual to respond to the charges and notice; and a finding or judgment. At the post-removal stage, the minimal due process rights generally include an opportunity for an evidentiary hearing if one has not already been provided.
- 907.4 Except as provided in section 907.3 of this section, and in accordance with section 905 of the CMPA (D.C. Official Code § 1-609.05) (2006 Repl.), a person holding an appointment in the Excepted Service is entitled to advance written notice of at least fifteen (15) days when termination is contemplated. The notice may explain the reason for the termination.
- 907.5 The fifteen-day (15-day) notice is not required for termination on the date previously anticipated for termination, such as in the case of an employee serving under an Excepted Service appointment with a not-to-exceed (NTE) date or other date of anticipated termination included on the appointing personnel action.
- 907.6 Any person serving in an Excepted Service policy position whose position ceases to be authorized as a policy position by reason of a notice published in the D.C. Register in accordance with section 905.4 of this chapter is to be terminated not later than thirty

(30) days from the date of the published notice, except that the minimum advance written notice provision of section 907.4 of this section shall apply, as appropriate.

*Sections 908.1 and 908.2 are amended to read as follows:*

- 908.1 In accordance with section 902 of the CMPA (D.C. Official Code § 1-609.02 (2006 Repl.), and except as provided in section 908.2 of this section, no person holding an Excepted Service appointment pursuant to sections 904.1 or 904.6 of this chapter may be appointed to a position in the Career, Management Supervisory, or Educational Service during the six-month (6-month) period immediately preceding a Mayoral election.
- 908.2 Upon termination, a person holding an Excepted Service appointment pursuant to sections 904.1 (a) or 904.1 (f)(1) through (12) of this chapter who has Career Service or Educational Service status may retreat, at the discretion of the terminating personnel authority, within three (3) months of the effective date of the termination, to a vacant position in such service for which he or she is qualified.

*The heading of section 909 is changed from “Residency Requirements;” and section 909.1 is amended to read as follows:*

## **909 RESIDENCY AND DOMICILE REQUIREMENTS**

- 909.1 The statutory residency and domicile requirements for the Excepted Service and the provisions of Chapter 3 of these regulations are applicable to all persons appointed to positions in the Excepted Service.

*A new section 910 is added to read as follows:*

## **910 SPECIAL CONSIDERATION FOR PLACEMENT AND ADVANCEMENT**

- 910.1 (a) The following employees shall be referred to selecting officials in subordinate agencies for interview by management and special consideration for placement and advancement for Excepted Service positions they apply for:
- (1) Graduates of the District government’s Certified Public Manager Program; and
  - (2) Persons appointed as Capital City Fellows (CCF), upon completion of the two-year (2-year) CCF Program.
- (b) The provisions of this section are limited to Excepted Service positions recruited for through vacancy announcements open to the general public.
- (c) As applicable, if appointed, any employee as described in section 910.1 (a) above shall be required to comply with the residency and domicile requirements for the Excepted Service pursuant to section 906 of the CMPA (D.C. Official Code § 1-609.06) (2006 Repl.).

- (d) The Director, D.C. Department of Human Resources (DCHR), may issue procedures providing guidance for the implementation of section 910.1 (a) above, to include:
- (1) Language notifying employees and agency management of the special consideration for placement and advancement provisions of this section;
  - (2) The manner in which these employees will be tracked for referral and consideration; and
  - (3) A requirement that selecting officials submit a written explanation to the DCHR on the non-selection of one of these employees.
- (e) An employee as described in section 910.1 (a) above shall receive special consideration for placement and advancement under this section only until he or she accepts and is placed in a position as a result of the referral. Referrals under this section shall cease if the employee declines a position.
- (f) An employee who separates from District government service shall not be eligible for referrals under this section upon re-employment with the District government.

*Sections 911.1 and 911.2 are amended to read as follows:*

- 911.1 In accordance with section 903 (g)(1) of the CMPA (D.C. Official Code § 1-609.03 (g)(1)) (2007 Supp.), an agency may pay to an individual reasonable travel expenses, up to a maximum of five thousand dollars (\$5000), incurred incidental to pre-employment interviews held for the purpose of ascertaining his or her qualifications for a hard-to-fill policy position in the Excepted Service at grade level 11 or pay level ES-5, as applicable, or above.
- 911.2 In accordance with section 903 (g)(2) of the CMPA (D.C. Official Code § 1-609.03 (g) (2)) (2007 Supp.), an agency may pay reasonable relocation expenses for an individual and his or her immediate family when that individual is selected for or appointed to a hard-to-fill policy position in the Excepted Service at grade level 11 or pay level ES-5, as applicable, or above, if relocation is to the District of Columbia from outside the Greater Washington Metropolitan Area.

*Section 912.1, 912.5, 912.6, and 912.7 are amended to read as follows:*

- 912.1 In accordance with section 903 (e) of the CMPA (D.C. Official Code § 1-609.03 (e)) (2007 Supp.), a personnel authority may authorize performance incentives for exceptional service by an employee appointed to an Excepted Service policy position under section 903 (a) of the CMPA (D.C. Official Code § 1-609.03 (a)) (2007 Supp.).
- 912.5 In addition to performance incentives in accordance with this section, Excepted Service employees are eligible for incentive awards pursuant to Chapter 19 of these regulations,

including Retirement Awards but excluding the other categories of monetary awards in that chapter.

912.6 Performance incentives for Excepted Service employees shall be submitted, processed and approved in accordance with Chapter 19 of these regulations.

912.7 A performance incentive awarded under this section will not be considered base pay for any purpose, and will be subject to the withholding of federal, District of Columbia and state income taxes, and social security taxes, if applicable. The amount of a performance incentive cannot be adjusted upward to cover these taxes.

*Section 913.1 is amended to read as follows:*

913.1 In accordance with section 903 (f) of the CMPA (D.C. Official Code § 1-609.03 (f)) (2007 Supp.), and subject to the provisions of this section, an individual appointed to an Excepted Service policy position or an Excepted Service statutory position shall be paid up to twelve (12) weeks of separation pay at his or her rate of basic pay upon separation for non-disciplinary reasons, as follows:

- (a) An individual at grade level 15 (or equivalent) or pay level ES-9 or above, as applicable, shall be paid separation pay in increments of weeks up to a maximum of eight (8) weeks, unless the personnel authority specifies that separation pay of more than eight (8) weeks, but not to exceed the twelve-week (12-week) limit, is warranted; and
- (b) An individual at grade level 14 (or equivalent) or pay level ES-8 or below, as applicable, shall be paid separation pay in increments of weeks up to a maximum of four (4) weeks, unless the personnel authority specifies that separation pay of more than four (4) weeks, but not to exceed the twelve-week (12-week) limit, is warranted.

*Section 913.4 (b) is amended to read as follows:*

913.4 Separation pay is not payable to any individual who either:

- (a) Has accepted an appointment to another position in the District government without a break in service; or
- (b) Is eligible to receive an annuity under any retirement program for employees of the District government, excluding the District retirement benefit program under section 2605 of the CMPA (D.C. Official Code § 1-626.05) (2006 Repl.).

*Section 913.6 is amended to read as follows:*

913.6 Notwithstanding the provisions in subsection 913.1 (a) and (b), separation pay shall not exceed four (4) weeks for any individual covered by this section who has not been employed with the District government for at least one (1) year prior to the separation.

*Section 914 is amended to read as follows:*

**914 PERFORMANCE EVALUATION SYSTEM FOR EXCEPTED SERVICE EMPLOYEES**

914.1 Except as provided in Chapter 14 of these regulations, the performance of employees in the Excepted Service shall be evaluated utilizing the performance management system in that chapter.

*Section 915 is amended as follows:*

**915 ATTORNEY CERTIFICATE OF GOOD STANDING FILING REQUIREMENT**

*Sections 915.1 and 915.2 are amended to read as follows:*

915.1 In accordance with section 881 (a) of the CMPA (D.C. Official Code § 1-608.81 (a)) (2006 Repl.), the provisions of this section are applicable to each attorney appointed in the Excepted Service at grade level 13 (or “ES-7” for Excepted Service attorneys who are compensated under the ES Schedule) or equivalent and above who is required to be a member of the D.C. Bar as a prerequisite of employment, and who is employed by:

- (a) The Office of the Chief Financial Officer;
- (b) Any agency, independent or subordinate, and whose duties, in whole or substantial part, consist of hearing cases as an administrative law judge or as an administrative hearing officer; and
- (c) Any independent agency excluded from the Legal Service, including the Housing Finance Agency, Pretrial Services Agency, Water and Sewer Authority, and Housing Authority.

915.2 Not later than December 15 of each year, or as specified in sections 915.18 and 915.19 of this section, each attorney as described in section 915.1 of this section must file with the D.C. Department of Human Resources (DCHR) a certificate of good standing from the Committee on Admissions, D.C. Court of Appeals.

915.3 Except as specified in sections 915.18 and 915.19 of this section, the certificate of good standing submitted every year pursuant to this section must be dated not earlier than October 1 and not later than December 15 of the year of submission.

*Subsection 915.4 (b) is amended to read as follows:*

915.4 Each subordinate agency or independent personnel authority that employs Excepted Service attorneys subject to the filing requirement is responsible for:

- (a) Notifying each agency attorney of the filing requirement every year; and

- (b) Submitting a list of agency attorneys subject to the filing requirement to the Director of the DCHR every year, not later than the December 15 deadline.

*Section 915.5 is amended to read as follows:*

- 915.5 Notwithstanding the procedures in section 915.2 of this section, each subordinate agency or independent personnel authority may elect to submit every year to the Committee on Admissions, D.C. Court of Appeals, a consolidated listing requesting certificates of good standing (certificates) for each agency attorney subject to the filing requirement, and file the original individual certificates with the DCHR on behalf of each attorney.
- 915.6 A subordinate agency or independent personnel authority that elects to submit a consolidated listing as specified in section 915.5 of this section is responsible for establishing internal procedures for the compilation of the consolidated listing and every year inform each attorney subject to the filing requirement of the internal procedures. Any consolidated listing submitted to the Committee on Admissions, D.C. Court of Appeals (Court) must include, at a minimum, the following:
- (a) The attorney's name and bar number and, if necessary, some other identifier such as the attorney's date of admission to the D.C. Bar;
  - (b) A request that an individual certificate be prepared for each attorney in good standing from the names submitted in the consolidated listing; and
  - (c) A request that the Court specify which attorneys, from the names submitted in the consolidated listing, are not in good standing.
- 915.7 Any consolidated listing prepared pursuant to section 915.5 of this section must be submitted to the Committee on Admissions, D.C. Court of Appeals, as soon after October 1 of each year as practicable, but not later than November 15 of each year.

*Sections 915.8 through 915.15 are amended to read as follows:*

- 915.8 Nothing in this section prevents an attorney subject to the filing requirement from individually applying for the certificate of good standing (certificate) from the Committee on Admissions, D.C. Court of Appeals, and filing the certificate directly with the DCHR by December 15 of each year.
- 915.9 Each subordinate agency head or independent personnel authority that elects to submit a consolidated listing to the Committee on Admissions, D.C. Court of Appeals (Court) pursuant to section 915.5 of this section will provide every year to the Director, DCHR:
- (a) Each original individual certificate of good standing received;
  - (b) The name of each attorney who is not in good standing and any documentation from the Court to that effect; and

- (c) A copy of the consolidated listing submitted to the Court.
- 915.10 Upon receipt of the original individual certificate of good standing (certificate) from each attorney, or subordinate agency or independent personnel authority on his or her behalf, the Director of the DCHR (or his or her designee) will:
- (a) File the original individual certificates in a place designated for that purpose; and
  - (b) In the case of an attorney who is not in compliance with the filing requirement, forward the name to the appropriate agency head.
- 915.11 Notwithstanding any other provision in this section, the Director, DCHR, may establish internal procedures to identify every year each attorney as described in section 915.1 of this section who is subject to the filing requirement and subsequently identify any attorney who did not comply with the filing requirement.
- 915.12 Failure of any attorney as described in section 915.1 of this section, either individually, or through his or her employing subordinate agency or independent personnel authority, to file the certificate of good standing with the DCHR by December 15 of each year, or as specified in sections 915.18 or 915.19 of this section, will result in forfeiture of employment.
- 915.13 Upon written request from an attorney subject to the filing requirement, the Director of the DCHR or independent personnel authority may grant a temporary waiver of the filing requirement to the attorney if compliance with the filing requirement by December 15 is inordinately difficult due to circumstances beyond his or her control or other good cause.
- 915.14 Any request for a temporary waiver of the filing requirement must be submitted by the attorney to the Director of the DCHR or independent personnel authority not later than December 1.
- 915.15 The Director of the DCHR or independent personnel authority will grant a temporary waiver of the filing requirement to an attorney who has exercised due diligence in applying to be waived in to the D.C. Bar from another jurisdiction but does not anticipate being waived in by December 15.
- 915.16 A request for temporary waiver of the filing requirement must include all of the following:
- (a) The reason or reasons for the request;
  - (b) The date of appointment to the attorney position subject to the filing requirement;
  - (c) In the case of an attorney as described in section 915.15 of this section, the date he or she submitted application to be waived in to the D.C. Bar; and

- (d) Any appropriate or required supporting material or documentation to substantiate the request.

*Sections 915.17 through 915.21 are amended to read as follows:*

- 915.17 The Director of the DCHR or independent personnel authority will promptly determine whether to grant the request for a temporary waiver of the filing requirement and notify the attorney in writing. A notification granting the request must inform the attorney of the deadline to file prescribed in section 915.18 of this section. A notification denying the request must inform the attorney of the following:
- (a) The reason or reasons for the denial of the request;
  - (b) That he or she has thirty (30) days from the receipt of the notification denying the request to attempt to file the certificate of good standing (certificate) with the DCHR;
  - (c) That he or she will be terminated at the end of the prescribed thirty-day (30-day) period if unable to file the certificate with the DCHR within the prescribed period; and
  - (d) The effective date of termination in the event that he or she is unable to file the certificate with the DCHR within the prescribed period.
- 915.18 An attorney granted a temporary waiver of the filing requirement (waiver) must file a certificate of good standing (certificate) with the DCHR within thirty (30) days of being admitted to the D.C. Bar. A certificate filed pursuant to this subsection must not be dated earlier than the date of the written request for the waiver submitted by the employee.
- 915.19 When a personnel action placing an employee in an attorney position subject to the filing requirement, such as in the case of a promotion to a grade 13 (or "ES-7" for Excepted Service attorneys who are compensated under the ES Schedule) or equivalent, becomes effective on or after the December 15 deadline, the attorney will file a certificate of good standing (certificate) with the DCHR within thirty (30) days of the effective date of such personnel action. A certificate filed pursuant to this subsection must not be dated earlier than the effective date of the personnel action that placed the employee in the attorney position subject to the filing requirement.
- 915.20 Upon establishing the effective date of a personnel action as described in section 915.19 of this section and processing the action, the Director of the DCHR or independent personnel authority will promptly inform the affected employee, in writing, of the deadline to file prescribed in section 915.19 of this section.
- 915.21 Each subordinate agency or independent personnel authority will provide a written notice of the intent to terminate employment to any agency attorney who is not in compliance with the filing requirement (requirement), except that in the case of a denial

of a request for a temporary waiver of the requirement, notification will be accomplished as specified in section 915.17 of this section. The notice will inform the attorney:

- (a) That he or she has thirty (30) days from the receipt of the notice to attempt to file the certificate of good standing (certificate) with the DCHR;
- (b) That he or she will be terminated at the end of the prescribed thirty-day (30-day) period if unable to file the certificate with the DCHR within the prescribed period; and
- (c) The effective date of termination in the event that he or she is unable to file the certificate with the DCHR within the prescribed period.

915.22 Each appointee to an attorney position subject to the filing requirement (requirement) will be notified by the appropriate personnel authority at the time of hire, in writing, of the requirement, and that failure to comply by December 15 of each year or as specified in sections 915.18 and 915.19 of this section, as applicable, will result in forfeiture of employment.

*Section 915.23 is amended to read as follows:*

915.23 Not later than March 1 of each year after the December 15 filing deadline for the preceding year, the Director of the DCHR will publish in the D.C. Register the list of attorneys who have not met the filing requirement.

## **916 – 919: RESERVED**

*Section 920 is amended as follows:*

### **920 PROMOTION TO BATTALION FIRE CHIEF AND DEPUTY FIRE CHIEF POSITIONS – FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT**

*Section 920 is amended to read as follows:*

920.1 D.C. Official Code § 5-402 (b)) (2007 Supp.) provides that the Fire Chief shall establish criteria for Excepted Service appointments to Battalion Fire Chief and Deputy Fire Chief that addresses the areas of education, experience, physical fitness, and psychological fitness. The criteria established, which shall become effective on October 1, 2007, are specified in sections 920.2 through 920.4 of this section.

920.2 Promotion to Battalion Fire Chief will be accomplished in accordance with the following:

- (a) A Captain will be eligible for consideration for promotion to the rank of Battalion Fire Chief after having served as Captain for at least one (1) year;

- (b) Each candidate must be certified to the Fire Officer II level in accordance with the standards of the National Fire Protection Association (NFPA), or equivalent, and must meet at least one (1) of the following three (3) educational and training requirements:
  - (1) Certification to Fire Officer III level in accordance with NFPA standards, or equivalent;
  - (2) A minimum of forty-five (45) semester hours of college level course work, with at least fifteen (15) semester hours in core subjects such as English composition, mathematics, and science, and the remainder in fire science or administration courses, or the equivalent of fire science or administration courses; or
  - (3) A minimum of thirty (30) hours toward certification as Fire Officer III in accordance with NFPA standards, or equivalent, with an additional fifteen (15) semester hours of college level course work in core subjects such as English composition, mathematics, and science.
- (c) A candidate hired after December 31, 1980 will be considered ineligible for consideration for promotion to the rank of Battalion Fire Chief if his or her record includes a suspension action for a period of fourteen (14) days or more within the three (3) years prior to submission of his or her application for promotion.
- (d) Each candidate will be required to successfully complete a promotional physical at the time of selection.

920.3 Promotion to Deputy Fire Chief will be accomplished in accordance with the following:

- (a) A Battalion Fire Chief will be eligible for consideration for promotion to the rank of Deputy Fire Chief after having served as Battalion Fire Chief for at least two (2) years;
- (b) Each candidate must be certified to Fire Officer II level in accordance with the standards of the National Fire Protection Association (NFPA), or equivalent, and must meet at least one (1) of the following three (3) educational and training requirements:
  - (1) Certification to Fire Officer III level in accordance with NFPA standards, or equivalent;
  - (2) A minimum of forty-five (45) semester hours of college level course work, with at least fifteen (15) semester hours in core subjects such as English composition, mathematics, and science, and the remainder in fire science or administration courses, or the equivalent of fire science or administration courses; or

- (3) A minimum of thirty (30) hours toward certification as Fire Officer III in accordance with NFPA standards, or equivalent, with an additional fifteen (15) semester hours of college level course work in core subjects such as English composition, mathematics, and science.
- (c) A candidate hired after December 31, 1980 will be considered ineligible for consideration for promotion to the rank of Deputy Fire Chief if his or her record includes a suspension action for a period of fourteen (14) days or more within the three (3) years prior to submission of his or her application for promotion.
- (d) Each candidate will be required to successfully complete a promotional physical at the time of selection.

920.4 The selection process for the Battalion Fire Chief and Deputy Fire Chief is as follows:

- (a) The Fire Chief is authorized to select for promotion any of the members who meet the minimum qualification standards listed in sections 920.2 and 920.3 of this section.
- (b) The Fire Chief will submit the final nomination of names to the Mayor, together with any other information as the Mayor may require.

*Section 999 is amended as follows:*

*Definitions for the terms “break in service,” “intermittent employment,” and “temporary employment” are added to read as follows; and the definition of the terms “consultant,” “consultant position,” “Excepted Service,” “expert,” “expert position,” “performance contract,” and “personnel authority” are amended to read as follows:*

## **999 DEFINITIONS**

999.1 In this chapter, the following terms have the meaning ascribed:

**Break in service** – a period of one (1) workday or more between separation and reemployment that may cause a loss of rights or privileges.

**Consultant** – for the purposes of section 904.4 (c) of this chapter, the term “consultant” means a person who serves as an advisor to an officer or instrumentality of the District government, as distinguished from an officer or employee who carries out the agency’s duties and responsibilities. A consultant gives views or opinions on problems or questions presented by the agency, but neither performs nor supervises performance of operating functions. The person is an expert in the field in which he or she advises, but need not be a specialist. A person’s expertness may consist of a high order of broad administrative, professional, or technical experience indicating that his or her ability and knowledge make his or her advice distinctively valuable to the agency.

**Consultant position** – for the purposes of section 904.4 (c) of this chapter, the term “consultant

position” means a position requiring the performance of purely advisory or consultant services, not including performance of operating functions.

**Disciplinary reasons** – includes but is not limited to behavior that negatively impacts the integrity of government operations or that is contrary to established standards, policies, or procedures; failure to meet specific requirements for the position the employee occupies, such as professional licensing or certification requirements; and failure to meet established performance goals, unsatisfactory or poor performance, incompetence, or any other performance-related deficiencies.

**Excepted Service** – positions identified as being statutory, transitional, public employment, special category, training, or policy positions, and authorized by sections 901 through 908 of the CMPA (D.C. Official Code § 1-609.01 through 1-609.08) (2006 Repl.). These positions are not in the Career, Educational, Management Supervisory, Legal or Executive Service.

**Expert** – for the purposes of section 904.4 (c) of this chapter, the term “expert” means an expert may be a person who performs or supervises regular duties and operating functions and shall include the following:

- (a) A person with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field; and
- (b) Certain members of boards or commissions.

**Expert position** – for the purposes of section 904.4 (c) of this chapter, the term “expert position” means: (a) a position that, for satisfactory performance, requires the services of an expert in the particular field, as defined above, and with duties that cannot be performed satisfactorily by someone not an expert in that field; or (b) a position that is occupied by members of certain boards and commissions.

**Intermittent employment** – for the purposes of section 904.4 (c) of this chapter, the term “intermittent employment” means occasional or irregular employment on programs, projects, problems, or phases thereof, requiring intermittent services, without a regularly scheduled tour of duty. If at any time it is determined that the employee’s work is no longer intermittent in nature, the person’s employment must be changed immediately.

**Performance contract** – an agreement between an employee in an Excepted Service policy position under section 903 (a) of the CMPA (D.C. Official Code § 1-609.03 (a)) (2007 Supp.) and the personnel authority that may be entered into and that clearly identifies measurable goals and outcomes.

**Personnel authority** – an individual or entity with the authority to administer all or part of a personnel management program as provided in section 401 of the CMPA (D.C. Official Code § 1-604.01 *et seq.*) (2006 Repl. and 2007 Supp.).

**Temporary employment** – for the purposes of section 904.4 (c) of this chapter, the term “temporary employment” means employment for one (1) year or less on programs, projects, problems, or phases thereof, requiring temporary service for such a period of time.

**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 sections 951 through 958 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-609.51 *et seq.*) (2006 Repl.), hereby gives notice that final rulemaking action was taken to adopt the following rules. These rules amend Chapter 38, Management Supervisory Service, of Title 6 of the District of Columbia Municipal Regulations (DCMR), in its entirety. No comments were received and no changes were made under the notice of proposed rulemaking published on May 30, 2008 (55 DCR 6205). Final rulemaking action was taken on July 10, 2008.

**CHAPTER 38****MANAGEMENT SUPERVISORY SERVICE**

*Chapter 38 of the D.C. Personnel Regulations is amended to read as follows:*

**3800 POLICY**

- 3800.1 Pursuant to section 951 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 § 1-609.51) (2006 Repl.), the Management Supervisory Service is established within the District government to ensure that each agency has the highest quality of managers and supervisors who are responsive to the needs of the government.
- 3800.2 This chapter applies to all appointments to the Management Supervisory Service under the authority of sections 951 through 958 of the CMPA (D.C. Official Code § 1-609.51 *et seq.*) (2006 Repl.).
- 3800.3 In accordance with section 954 of the CMPA (D.C. Official Code § 1-609.54) (2006 Repl.), an appointment to the Management Supervisory Service is an at-will appointment.
- 3800.4 For the purposes of this chapter, the term "appointment" means all initial appointments to the Management Supervisory Service, and all subsequent position changes, including reassignments and promotions, within the Management Supervisory Service.

**3801 APPLICABILITY**

- 3801.1 The Management Supervisory Service consists of all employees who meet the definition of "management employee" in section 1411 (5) of the CMPA (D.C. Official Code § 1-614.11 (5)) (2006 Repl.), that is, employees whose functions include responsibility for project management and supervision of staff and the achievement of the project's overall

goals and objectives.

3801.2 The following employees are excluded from the Management Supervisory Service:

- (a) Employees occupying positions included in recognized collective bargaining units; and
- (b) Employees with acting supervisory or managerial responsibilities only in the absence of the regular supervisor or manager.

3801.3 Positions that have some supervisory duties and responsibilities but less than those described in the appropriate classification standards guide shall be excluded from the Management Supervisory Service.

3801.4 Persons appointed to the Management Supervisory Service are not in the Career, Educational, Legal, Excepted, or Executive Services.

3801.5 An employee holding a position in the Career or Educational Services may be detailed, temporarily promoted, temporarily transferred, or temporarily reassigned, without a break in service, to a position that would otherwise be in the Management Supervisory Service, without losing his or her existing status in the Career or Educational Services.

**3802 COMPENSATION SYSTEM, SALARY AND RATE SCHEDULES, AND PAY-FOR-PERFORMANCE SYSTEM FOR MANAGEMENT SUPERVISORY SERVICE EMPLOYEES**

3802.1 The compensation provisions of Chapter 11 of these regulations are applicable to all positions in the Management Supervisory Service.

3801.2 As applicable, individuals appointed to the Management Supervisory Service shall be paid from either:

- (a) The Management Supervisory Rate Schedule, the symbol for which is MW, which is the hourly rate schedule applicable to Management Supervisory Service employees who are paid under the Wage Service Rate System established in Chapter 11 of these regulations; or
- (b) The Management Supervisory Service Pay Schedule (“MS Schedule”), the symbol for which is MS, which is the annual rate schedule applicable to Management Supervisory Service employees who are paid under the District Service Salary System established in Chapter 11 of these regulations.

3802.3 The MS Schedule is divided into grade levels 11 through 16 and consists of an open range with no steps, only a “minimum”, “midpoint,” and “maximum” as reference points of the range for each grade level.

3802.4 The MS Schedule provides a varying, pay-for-performance system for Management Supervisory Service employees paid from it. Some of the features of a merit-based pay

plan such as the new MS Schedule are:

- (a) Merit pay or pay-for-performance systems provide the flexibility to:
  - (1) Combine merit or performance-based increases with what is commonly known as a “cost-of-living adjustments” or “market adjustments;” or
  - (2) Base the total salary increase the employee receives solely on merit (performance).
- (b) Base-pay increases vary in direct relationship to each employee’s performance level;
- (c) The system differentiates between the various levels of performance and rewards employees accordingly through additional compensation;
- (d) The success of the system depends on accurate and realistic performance evaluations by supervisors; and
- (e) The system provides flexibility for varying budget constraints and revenues.

3802.5 Each personnel authority, in consultation with the Office of the Chief Financial Officer, shall:

- (a) Determine the percentage of the performance-based or merit pay increase, if any, for agency Management Supervisory Service employees who are paid under the MS Schedule and have received a Performance Plan for the year, and whose level of competence and job performance is determined to be acceptable or better as evidenced by a performance rating of “*Meets Expectations*” or higher;
- (b) Determine the total percentage of the annual salary increases for these employees, if any; and
- (c) Communicate the plan to agency heads every year.

3802.6 Any performance base or merit pay increase for Management Supervisory Service employees shall be approved by the Mayor (or designee) or independent personnel authority.

3802.7 An eligible Management Supervisory Service employee whose salary is at the top of the range for the grade level of the position he or she occupies and who meets the requirements in section 3802.5 (a) of this section, shall receive a one-time (1-time) lump sum payment for the calendar year in question, the amount of which shall not exceed the percentage afforded to other eligible agency employees with the same performance rating.

3802.8 The rates of pay on the Management Supervisory Service Pay Schedules shall not be used to set pay upon subsequent appointment to a position in the Career Service.

**3803 INCUMBENT CLASSIFICATION SYSTEM**

3803.1 Until such time as the Mayor adopts a new classification system, the classification system that was in effect on December 31, 1979 is the system applicable to the classification of positions in the Management Supervisory Service.

**3804 METHOD OF MAKING MANAGEMENT SUPERVISORY SERVICE APPOINTMENTS**

3804.1 In accordance with section 953 of the CMPA (D.C. Official Code § 1-609.53) (2006 Repl.), all appointments to the Management Supervisory Service, except as specifically limited in this chapter, shall be by open competition on the basis of merit by selection from the highest qualified applicants, based on specific job requirements with appropriate regard for affirmative action goals as provided by law and as determined under this chapter.

3804.2 An appointment to the Management Supervisory Service may be made for an indefinite period, or as a time-limited appointment.

3804.3 Because an appointment to the Management Supervisory Service is an at-will appointment, a date specifying the duration of a time-limited appointment shall not prevent the termination of the employee occupying such a position prior to the date specified; provided that the termination is effected pursuant to section 3813 of this chapter.

**3805 PROHIBITED PERSONNEL PRACTICES**

3805.1 No person shall interfere in the competitive process by influencing another person to withdraw from competition for any position in the Management Supervisory Service for the purpose of either improving or injuring the prospects of any applicant for appointment or selection.

3805.2 In accordance with the D.C. Human Rights Act of 1977, as amended, the District government does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intra-family offense, and place of residence or business.

**3806 QUALIFICATION STANDARDS AND GENERAL REQUIREMENTS FOR SELECTION**

3806.1 A person selected to a position in the Management Supervisory Service shall meet the qualification standards for the position for which selected.

3806.2 Suitability requirements applicable to the Management Supervisory Service are specified in Chapter 4 of these regulations.

- 3806.3 Whenever the practice of certain occupations and professions is subject to licensure requirements (as established by District, state, or federal law), the possession of a license shall constitute a qualification requirement for the position.
- 3806.4 Selection procedures for the Management Supervisory Service shall be based on a job analysis designed to identify and evaluate the factors that are important in evaluating candidates, as well as the following:
- (a) The basic duties and responsibilities of the position; or
  - (b) The tasks or the knowledge, skills, and abilities required to perform the duties and carry out the responsibilities of the position.
- 3806.5 The personnel authority may require an applicant to provide documentary evidence of his or her qualifications for an appointment in the Management Supervisory Service.

**3807 COMPETITIVE AND NON-COMPETITIVE PLACEMENT**

- 3807.1 Except as otherwise provided in this chapter, competitive procedures shall apply to all initial appointments to the Management Supervisory Service, and subsequent assignments and placements to positions within the Management Supervisory Service, including the following:
- (a) Promotions;
  - (b) Temporary promotions exceeding one hundred twenty (120) days;
  - (c) Selection for details for more than two hundred forty (240) days to a position at a higher grade or to a position at the same grade level with known promotion potential; and
  - (d) Selection for a position, including by reassignment or demotion, with more promotion potential than the last grade held under a Management Supervisory Service competitive appointment.
- 3807.2 Competitive procedures shall not apply to the following actions within the Management Supervisory Service:
- (a) The following types of Management Supervisory Service promotions:
    - (1) A promotion resulting from the upgrading of a position without significant change in the duties and responsibilities due to issuance of a new classification standard or the correction of an initial classification error;
    - (2) A promotion resulting from an employee's position being reclassified at a higher grade because of accretion of additional duties and responsibilities without planned management action;
    - (3) A career ladder promotion if the original competition for the position clearly established the career ladder; or

- (4) A temporary promotion under this chapter for a period of one hundred twenty (120) days or less.
  - (b) Indefinite reassignment or transfer to a position of the same grade with no known promotion potential;
  - (c) A temporary reassignment for a period of one hundred twenty (120) days or less;
  - (d) A reassignment or demotion pursuant to section 3809 of this chapter;
  - (e) Consideration of a candidate not given proper consideration in a competitive promotion action; or promotion of an employee who was denied promotion as a result of other error, on order of the D.C. Department of Human Resources or independent personnel authority;
  - (f) A detail of two hundred forty (240) days or less to a position at a higher grade or to a position with known promotion potential; and
  - (g) Temporary Appointments Pending the Establishment of Registers (TAPER).
- 3807.3
- (a) While this chapter does not include time-in-grade requirements or restrictions for promotion to or within the Management Supervisory Service that would prevent an employee from advancing to a higher grade position before serving at the lower grade for at least one (1) year, agencies must exercise discretion concerning any such promotions; and consider establishing internal controls and procedures to handle such promotions, with regard to equity and reasonableness.
  - (b) The following criteria shall be followed when considering promoting an employee to or within the Management Supervisory Service when the employee meets the qualifications requirements for the higher grade position but has served at the lower grade level for less than one (1) year. Under such circumstances, consideration shall be given to the following:
    - (1) The employee's total work history;
    - (2) The employee's education, superior academic credentials, or superior academic achievements;
    - (3) Any work performed by the employee that is related to the higher grade position and at a level at least commensurate (equivalent) to the higher grade position;
    - (4) Any negative impact that an action to advance an employee who has not served at the lower grade level for at least one (1) year may have on other agency Management Supervisory Service employees;

- (5) The impact that an action to advance an employee who has not served at the lower grade level for at least one (1) year may have on the agency's salary structure; or
- (6) Hardship, inequity, or especially meritorious cases.

3807.4 An employee's salary history (i.e., previous higher salary) shall not automatically be considered as the determining factor in the employee's promotion under the circumstances and criteria described in section 3807.3 of this section; however, it may be considered along with the criteria listed in that section.

3707.5 An employee promoted under the circumstances described in section 3807.3 of this section may be advanced more than two (2) grade levels at a time.

### **3808 COMPETITIVE SELECTION**

3808.1 Competitive selection procedures shall consist of assembled examinations, which may include written, oral, or performance examinations, or a combination thereof; or unassembled examinations, which may include but shall not be limited to the establishment of crediting plans (for ranking), selection panels, or interview panels, or a combination of more than one (1) of these recruitment and selection methods.

3808.2 Each competitive selection shall result from appropriate recruitment activities and a vacancy announcement made available to applicants.

3808.3 (a) The following employees shall be referred to selecting officials in subordinate agencies along with other qualified candidates, for interview by management and special consideration for placement and advancement for Management Supervisory Service positions they apply for; provided that no person referred for such special consideration shall be selected ahead of a candidate claiming the residency preference pursuant to section 957 of the CMPA (D.C. Official Code § 1-609.57) (2006 Repl.), if any:

- (1) Graduates of the District government's Certified Public Manager Program; and
- (2) Persons appointed as Capital City Fellows (CCF), upon completion of the two-year (2-year) CCF Program.

(b) The Director, D.C. Department of Human Resources (DCHR), shall issue procedures providing guidance for the implementation of section 3808.3 (a) above, to include:

- (1) Language notifying employees and agency management of the special consideration for placement and advancement provisions of this section;

- (2) The manner in which these employees will be tracked for referral and consideration; and identified on selection certificates or registers; and
  - (3) A requirement that selecting officials submit a written explanation to the DCHR on the non-selection of one of these employees for reasons other than selection of a residency-preference candidate.
- (c) An employee as described in section 3808.3 (a) above shall be referred and receive special consideration for placement and advancement under this section only until he or she accepts and is placed in a position as a result of the referral. Referrals under this section shall cease if the employee declines a position.
- (d) An employee who separates from District government service shall not be eligible for referrals under this section upon re-employment with the District government.

### **3809 PLACEMENT BY REASSIGNMENT OR DEMOTION**

- 3809.1 A personnel authority may fill a vacancy within the Management Supervisory Service by reassignment of a Management Supervisory Service employee to another position of the same grade, either competitively or non-competitively, as provided in this section.
- 3809.2 When, as a result of attrition, reductions in force, reorganizations, or approved realignments within an agency, a Management Supervisory Service employee ceases to perform managerial or supervisory functions or duties, the employing agency may reassign or demote the employee to a vacant Management Supervisory Service position for which he or she qualifies; provided that there is no reduction in the benefits of the employee, and the position has no greater promotion potential than the position previously held.
- 3809.3 An agency may determine that it is necessary to reassign a Management Supervisory Service employee to a vacant Management Supervisory Service position for which he or she qualifies, for reasons other than those listed in section 3809.2 of this section; provided that the position has no greater promotion potential than the position previously held.
- 3809.4 A time-limited reassignment may be made for a period not to exceed one (1) year.
- 3809.5 A time-limited reassignment exceeding one hundred twenty (120) days to a position with established promotion potential higher than the currently held position will be effected competitively.
- 3809.6 Any reassignment or demotion under the circumstances described in sections 3809.2 and 3809.3 of this section shall be effected non-competitively.
- 3809.7 An employee may voluntarily accept a reassignment or demotion pursuant to sections 3809.2 or 3809.3 of this section, or be terminated as specified in section 3814 of this chapter.

**3810 MANAGEMENT SUPERVISORY SERVICE SKILLS MAINTENANCE AND ENHANCEMENT**

- 3810.1 In accordance with section 955 of the CMPA (D.C. Official Code § 1-609.55) (2006 Repl.), each employee appointed to the Management Supervisory Service will be required to maintain and enhance his or her management and supervisory skills through mandatory training courses every year, as prescribed by the personnel authority.
- 3810.2 Failure of a Management Supervisory Service employee to complete the prescribed training within time frames specified by the personnel authority may result in administrative action against the employee.

**3811 PERFORMANCE EVALUATION SYSTEM FOR MANAGEMENT SUPERVISORY SERVICE EMPLOYEES**

- 3811.1 Except as provided in Chapter 14 of these regulations, the performance of employees in the Management Supervisory Service shall be evaluated utilizing the performance management system in that chapter.

**3812 RESIDENCY PREFERENCE FOR MANAGEMENT SUPERVISORY SERVICE**

- 3812.1 The residency preference provisions of section 801(e) (1), (2), (3), (5), (6), and (7) of the CMPA (D.C. Official Code § 1-608.01(e) (1), (2), (3), (5), (6), and (7)) (2006 Repl.), as amended, and Chapter 3 of these regulations, shall apply to employment in the Management Supervisory Service.

**3813 EMPLOYEE RIGHTS UPON TERMINATION**

- 3813.1 An appointment to the Management Supervisory Service is an at-will appointment. A person appointed to a position in the Management Supervisory Service serves at the pleasure of the appointing authority, and may be terminated at any time. An employee in the Management Supervisory Service shall be provided a fifteen-day (15-day) notice prior to termination.
- 3813.2 No termination action shall be initiated under this chapter unless first authorized by the agency head (or designee) and the Director, D.C. Department of Human Resources (DCHR), or independent personnel authority, as applicable; except that a termination of a Management Supervisory Service employee in the DCHR shall be first authorized by the Director, DCHR (or designee), and the Chief of Staff for the Mayor.
- 3813.3 In accordance with section 954 of the CMPA (D.C. Official Code § 1-609.54 (b)) (2006 Repl.), an employee in the Management Supervisory Service shall be entitled to severance pay upon termination for non-disciplinary reasons.
- 3813.4 Severance pay shall not be paid to any individual who has accepted an appointment to another position in the District government without a break in service.

- 3813.5 Upon termination for non-disciplinary reasons, and at the discretion of the personnel authority, a person with Career Service status or Excepted Service status due to appointment as an attorney in the Excepted Service may retreat, within three (3) months of the effective date of the termination, to a vacant position within the agency to which he or she was promoted and for which he or she qualifies.
- 3813.6 A retreat in accordance with section 3813.5 of this section shall be to a position in the service in which the person acquired status.
- 3813.7 Terminations from the Management Supervisory Service are not subject to administrative appeals.

### **3899 DEFINITIONS**

For the purposes of this chapter, the following terms have the meaning ascribed:

**Agency** – any unit of the District of Columbia government, excluding the courts, required by law, by the Mayor of the District of Columbia, or by the Council of the District of Columbia to administer any law, rule, or any regulation adopted under authority of law. The term “agency” also includes any unit of the District of Columbia government created by the reorganization of one (1) or more of the units of an agency and any unit of the District of Columbia government created or organized by the Council of the District of Columbia as an agency.

**Assembled examination** – a computerized or multiple-choice written examination or test which may include a typing or data-entry skills test.

**Break in service** – a period of one (1) workday or more between separation and reemployment that may cause a loss of rights or privileges.

**Disciplinary reasons** – includes but is not limited to behavior that negatively impacts the integrity of government operations or that is contrary to established standards, policies, or procedures; failure to meet specific requirements for the position the employee occupies, such as professional licensing or certification requirements; and failure to meet established performance goals, unsatisfactory or poor performance, incompetence, or any other performance-related deficiencies.

**Manager** – an employee vested with the authority to direct the work of an organization, held accountable for the success of specific line or staff functions; responsible for supervision of staff, monitoring and evaluating the progress of an organization toward meeting goals, and making adjustments in objectives, work plans, schedules and commitment of resources. A manager serves as head or assistant head of a major organization, or specialized project of marked difficulty, responsibility or community significance.

**Personnel authority** – an individual or entity with the authority to administer all or part of a personnel management program as provided in section 401 of the CMPA (D.C. Official Code § 1-604.01 *et seq.*) (2006 Repl., and 2007 Supp.).

**Promotion** – the change of an employee while continuously employed, from one grade to a higher grade under the Management Supervisory Service Schedule, or between pay systems.

**Reassignment** – a change of an employee from a Management Supervisory Service position to another Management Supervisory Service position of the same grade.

**Supervisor** – incumbent of a position that accomplishes work through the direction of other employees and meets at least the minimum requirements for coverage under the appropriate supervisory grade evaluation guide.

**Temporary Appointment Pending the Establishment of Register (TAPER)** – a time-limited initial appointment to a position in the Management Supervisory Service, pending the establishment of a register when there are insufficient candidates on a register appropriate for filling the position. Authority for the use of this type of appointment shall be granted by the personnel authority only when the public interest requires that a vacancy be filled before eligibles can be certified.

**Unassembled examination** – an examination that does not require a written test.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA  
1333 H STREET N.W., 2ND FLOOR, WEST TOWER  
WASHINGTON, D.C. 20005

NOTICE OF FINAL RULEMAKING

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

AND

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

1. The public Service Commission of the District of Columbia (“Commission”) hereby gives notice, pursuant to Section 2-505 of the District of Columbia Official Code,<sup>1</sup> of its final rulemaking action taken in the above-captioned proceeding.

2. On May 23, 2008, the Commission issued a Notice of Proposed Rulemaking (“NOPR”) noticing its intent to adopt an amendment to Chapter 36, Electricity Quality of Service Standards (“EQSS”), codified in Title 15 of the District of Columbia Municipal regulations (“DCMR”), in not less than 30 days from publication of the NOPR in the *D.C. Register*.<sup>2</sup> The Commission proposed the amendment in order to ensure compliance with the EQSS.<sup>3</sup> Although interested parties were invited to comment on the proposed amendment within 30 days from the date of publication of the NOPR in the *D.C. Register*, no comments were filed. The following amendment to the EQSS, which contains no modifications from the NOPR, is approved by the Commission and will become effective upon the date of publication of this Notice of Final Rulemaking in the *D.C. Register*:

**3606 Compliance Reporting**

3606.1 The electric utility and all electricity suppliers shall collect and retain accurate data demonstrating compliance with the measures in this chapter. Data is to be collected on a monthly basis in a format established by Commission order.

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<sup>1</sup> D.C. Official Code, 2001 Ed. § 2-505.

<sup>2</sup> 55 *D.C. Register* 6011-6012 (May 23, 2008).

<sup>3</sup> The EQSS codifies the previously Commission-approved “Service Outage and Restoration Performance Standards for Reports to the District of Columbia Public Service Commission” (“Reporting Standards”) and the interim standards for customer service and system reliability – “Customer Service and Reliability Standards” (“CSRS”), as well as new electricity service quality standards.

- (a) The electric utility and all electricity suppliers shall submit monthly reports to the Commission on a quarterly basis pursuant to the following schedule: the report for the months of January, February, and March shall be submitted on April 30; the report for the months of April, May, and June, on July 30; the report for the months of July, August, and September, on October 30; and the report for the months of October, November, and December, on January 30 of the following year.
- (b) If the electric utility or any electricity supplier fails a measure in a quarterly report, the electric utility or electricity supplier shall file an explanation for the failure and a plan to remedy the failure in the following quarterly report. If the failure is due to customer error, or an unforeseeable event, the electric utility or electricity supplier may request a waiver of the performance standard in its filing. The request for a waiver shall contain a detailed explanation of the reasons for granting such a waiver.
- (c) The electric utility and all electricity suppliers shall retain reporting data for seven years in the event of an audit by the Commission.

3. Additional copies of the final rules may be obtained by writing Dorothy Wideman, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., 2<sup>nd</sup> Floor West Tower, Washington, D.C. 20005.

## OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FINAL RULEMAKING

The State Superintendent of Education, pursuant to the authority set forth in section 3(b)(11) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602(b)(11)) (2007 Supp) (SEOE Act), and Article II, Sections 1 and 4 of An Act to provide for compulsory school attendance, and for the taking of a school census in the District of Columbia, and for other purposes, approved February 4, 1925 (43 Stat. 806; D.C. Official Code §§ 38-202 and 38-205) (2001), hereby gives notice of the adoption of regulations adding a new Chapter 52 of Title 5 of the *District of Columbia Municipal Regulations* (DCMR), entitled “District of Columbia Home Schooling.” The purpose of the new chapter is to establish procedural rules for home schooling for District of Columbia residents from age 5 until a child reaches the age of 18 years.

The notice of proposed Home Schooling regulations was published in the *D.C. Register*, 55 DCR 7125 (June 27, 2008). The proposed Home Schooling regulations were first issued for public comment in the *DC Register* at 55 DCR 5281 (May 2, 2008), with public comment ending on June 2, 2008. The proposed rules were the subject of testimony presented at a State Board of Education (SBOE) public hearing held on, March 5, 2008; and were discussed at two public working sessions in June 2008, focusing on comments and possible revisions. Over 2800 emails and written comments and 400 phone calls were received from across the United States as well as from District of Columbia residents. Following a review of all the comments and other input received from the public, the State Board of Education approved the proposed rules as final, at a public meeting held on July 16, 2008.

The final regulations are the same as the proposed rules published in June, including the administrative procedures available to parents and legal guardians to resolve differences with regard to home schooling compliance. In the event of a dispute, the final regulations include an administrative appeal process giving parents and legal guardians an opportunity to appeal in writing to the State Superintendent of Education.

The District of Columbia has a statutory responsibility to assure that children between the ages of five and seventeen, residing in the District of Columbia, receive an education. The final regulations seek to balance this mandate with a choice for parents and legal guardians to provide a thorough and regular education in a home schooling program. The final regulations provide a framework to differentiate bona fide home schooling programs from instances where a child may not be receiving a regular and thorough education.

Pursuant to section 6(a) of the District of Columbia Administrative Procedures Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-505(a))(2001), the State Superintendent of Education has determined that in view of the public comments received, the public meetings of the SBOE on these rules, and the need to ensure that a regulatory framework for the benefit and well being of the District’s children is in place for the 2008 – 2009 school year, the rule making will become effective upon publication in the *D.C. Register*. This final regulations and related information are also available on the OSSE website at [osse.dc.gov](http://osse.dc.gov).

## CHAPTER 52 DISTRICT OF COLUMBIA HOME SCHOOLING

### Sections

5200	General Provisions
5201	Home Schooling Administration
5202	Written Notification
5203	Annual Verification and Discontinuation
5204	Home Schooling Program
5205	Educational Materials
5206	Review of Educational Materials
5207	Parent or Legal Guardian Qualifications
5208	Compliance, Review and Final Resolution
5209	Voluntary Participation in Standardized Testing
5210	Enrollment in District of Columbia Public Schools
5299	Definitions

### **5200 GENERAL PROVISIONS**

5200.1 The provisions of this chapter are issued pursuant to Section 3(b)(11) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176, D.C. Official Code § 38-2601. *et seq.*) (2007 Supp.) (SEOE Act), and Article II, sections 1 and 4 of an Act to provide for compulsory school attendance, for the taking of a school census in the District of Columbia, and for other purposes, approved February 4, 1925 (43 Stat. 806; D.C. Official Code §§ 38-202 and 38-205) (2001).

5200.2 Student records, documents, correspondence, and other materials received in accordance with the provisions of this chapter shall be reviewed pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; the Code of Federal Regulations (CFR) 34 CFR Part 99, and any other applicable District or federal confidentiality laws or regulations.

5200.3 The purpose of this chapter is to establish procedures for home schooling in accordance with the District of Columbia's school attendance and reporting laws and the SEOE Act, to ensure that children participating in a home schooling program receive thorough, regular education that will enable them to function as productive members of society in the 21<sup>st</sup> century.

### **5201 HOME SCHOOLING ADMINISTRATION**

5201 The Office of the State Superintendent of Education (OSSE) shall administer and implement the District of Columbia's Home Schooling regulations set forth in this chapter.

**5202 WRITTEN NOTIFICATION**

5202.1 A parent or legal guardian who chooses to provide home schooling in the District of Columbia shall provide written notification on an official form developed by the OSSE which:

- (a) Indicates consent to the requirements in this chapter; and
- (b) Shall be submitted to the OSSE at least 15 days, not including Saturdays, Sundays, or District holidays, prior to the first date of home instruction.

**5203 ANNUAL VERIFICATION AND DISCONTINUATION**

5203.1 For each year in which a home schooling program continues, the parent or legal guardian shall file a Home Schooling Notification Form identifying each child being home schooled, no later than August 15<sup>th</sup> of each year,

5203.2 A parent or legal guardian shall notify the OSSE in writing of any discontinuation of home schooling for any reason 15 days, not including Saturdays, Sundays, or District holidays, prior to discontinuation of home schooling.

**5204 HOME SCHOOLING PROGRAM**

5204.1 The home schooling program for each student shall:

- (a) Provide thorough, regular instruction of sufficient duration to implement the home school program; and
- (b) Provide instruction that includes, but need not be limited to, language arts, mathematics, science, social studies, art, music, health, and physical education.

5204.2 Nothing in this chapter shall be interpreted to require that home schooling should include programs or methods used by the District's public schools. Nor shall any home schooling program be required to adhere to specific curricular frameworks or any other program of instruction adopted by the District's public schools.

**5205 EDUCATIONAL MATERIALS**

5205.1 A parent or legal guardian who chooses to administer a home schooling program shall maintain a portfolio of home schooling materials for each child which includes evidence of the child's current work, such as examples of the child's writings, worksheets, workbooks, creative materials, assessments, or any other materials that demonstrate that the child is engaged in thorough, regular educational activities in a range of subjects.

5205.2 The portfolio should be maintained for at least one year and made available for review by the OSSE upon written request.

## **5206 REVIEW OF EDUCATIONAL MATERIALS**

5206.1 The OSSE may, at its discretion, request to review the portfolio of home schooling materials described in Section 5205, provided that the following requirements are met:

- (a) The request is made in writing;
- (b) The review is held at a time and place mutually agreeable to the representative of the OSSE and the parent or legal guardian;
- (c) There are not more than two (2) reviews conducted during a school year; and
- (d) The purpose of the review is to ensure that the child is receiving thorough, regular home schooling instruction, consistent with this chapter.

Nothing in this section shall be interpreted to require a regular periodic review of all portfolios.

## **5207 PARENT OR LEGAL GUARDIAN QUALIFICATIONS**

5207.1 Parents or legal guardians who wish to be their children's instructors must have a high school diploma or its equivalent.

5207.2 A parent or legal guardian who wishes to provide home schooling instruction and does not have a high school diploma or its equivalent may petition the OSSE for a waiver of section 5207.1. Such petition must provide evidence of the petitioner's ability to provide thorough, regular education.

## **5208 COMPLIANCE, REVIEW, AND FINAL RESOLUTION**

5208.1 If upon review of the home instruction portfolio, the OSSE determines that a student is not receiving thorough, regular education consistent with the requirements set forth in this chapter, the OSSE shall provide a written Notification of Deficiencies to the parent or legal guardian, within 30 days of the review, not including Saturdays, Sundays, or District holidays.

5208.2 A parent or legal guardian must respond in writing to the written Notification of Deficiencies no later than 30 days, not including Saturdays, Sundays, or District holidays, after the date of the written Notification of Deficiencies; and provide the OSSE with a Corrective Action Plan with evidence that each deficiency has been or is being corrected. The parent or legal guardian may request a meeting with the

OSSE before the Corrective Action Plan is due, to present evidence of compliance or otherwise discuss the deficiencies identified by the OSSE.

5208.3 The OSSE shall notify the parent or legal guardian in writing of the acceptance of the Corrective Action Plan with evidence that a deficiency has been corrected, or the need for further modification consistent with this chapter:

- a. The OSSE shall respond within 15 days of the date of the Plan, not including Saturdays, Sundays, or District holidays;
- b. The parent or legal guardian may request and the OSSE shall grant a meeting to discuss the OSSE response to the Plan; and
- c. The parent or legal guardian shall implement the Plan as approved by the OSSE.

5208.4 In the event the Corrective Action Plan fails to correct deficiencies, and the home schooling program therefore does not conform to the requirements of this chapter, the OSSE shall issue a Letter of Non-Compliance, which shall state the basis for its determination of non-compliance. Each Letter shall include a statement about the parent's or legal guardian's ability to seek review of the Letter with an appeal in writing to the State Superintendent of Education and the right to judicial review of a final decision by the State Superintendent of Education.

5208.5 An appeal to the State Superintendent of Education involving the Letter of Non-Compliance must be filed with the OSSE within 15 calendar days of the date of the Letter.

5208.6 A final decision issued by the State Superintendent of Education shall include a statement that the final decision may be appealed by the parent or legal guardian, to the Superior Court of the District of Columbia pursuant to D.C. Official. Code § 11-921 (a)(6).

5208.7 Within 45 days of the date of a final decision issued by the State Superintendent of Education, requiring the parent or legal guardian to enroll the child or children in a public or non public school, the parent or legal guardian shall enroll the child or children in a public or non public school, unless the action is stayed by court order.

## **5209 VOLUNTARY PARTICIPATION IN STANDARDIZED TESTING**

5209.1 A child receiving home schooling may participate free of charge in the regularly scheduled standardized testing programs that are administered in the public school the child is eligible to attend.

## **5210 ENROLLMENT IN A DISTRICT OF COLUMBIA PUBLIC SCHOOL**

5210.1 Upon application of a child to enroll in a District of Columbia public school from a home schooling program, placement of the child and any credits to be awarded toward high school graduation shall be determined by evaluation. The evaluation may include administration of standardized tests, other examinations, and interviews with the child.

**5299 DEFINITIONS**

For the purposes of this chapter, the term:

“Home Schooling” means an education program conducted, in compliance with this chapter, by the parent or legal guardian;

“OSSE” means the Office of the State Superintendent of Education, including any authorized OSSE designee.

“Parent or Legal Guardian” means a person having legal custody of a child or children; and

“Public School” means a District of Columbia public school, including public charter schools.

## DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

## NOTICE OF FINAL RULEMAKING

The Director of the District Department of Transportation, pursuant to the authority of Sections 2 and 3 of the Performance Parking Pilot Zone Temporary Act of 2008 (Act), effective June 5, 2008 (D.C. Law 17-170), or any substantially identical successor legislation; Mayor's Order 2008-56 (March 28, 2008); Sections 3(b) and 5(3)(D) 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) and 50-921.04(3)(D)); Mayor's Order 2007-179 (August 3, 2007); and the Motor Vehicle Parking Regulation Amendment Act of 1999, effective May 9, 2000 (D.C. Law 13-97; 18 D.C.M.R. § 2412.4), hereby gives notice of the intent to take final rulemaking action to adopt amendments to Chapters 24, 26, and 99 of Title 18, which is entitled "Vehicle and Traffic Regulations." The amendments establish a Ballpark Performance Parking Pilot Zone program to manage the demand for curbside parking created by the new Nationals Park baseball stadium.

Notice of Proposed Rulemaking (Notice) was published in the D.C. Register on April 11, 2008, at 55 DCR 3972, and May 23, 2008, at 55 DCR 6026. Extensive comments were received from the public, and several public meetings were held to discuss community reactions to the Notice. These comments serve as the basis for changes to, and clarification of, the hours and parking meter rates that appear in this final rulemaking in accordance with Sections 2(d)-(f) of the Act.

This final rule will be effective upon publication of this notice in the D.C. Register.

Chapter 24, **STOPPING, STANDING, PARKING, AND OTHER NON-MOVING VIOLATIONS**, is amended as follows:

*By amending § 2404.13 to read as follows:*

2404.13 Except as provided in § 2424, for the purpose of establishing meter rates based upon user demand for parking in various areas of the District, there shall be Premium Demand and Normal Demand Parking Meter Rate Zones.

*By amending § 2404.14 – 2404.23 to read as follows:*

2404.14 Except as provided in § 2424, the "Premium Demand Parking Meter Rate Zones" shall include those street segments or off-street parking facilities where the Director has determined there is a continuous demand for parking spaces to serve the various types of commercial activities in the immediate area.

2404.15 Except as provided in § 2424, the rates for parking meters in the "Premium Demand Parking Meter Rate Zones" shall be as follows:

- (a) Fifty cents (50¢) for fifteen minutes (15 min.);
  - (b) Twenty-five cents per hour (25¢/hr.) for motorcycle size spaces; and
  - (c) Twenty-five cents (25¢) for fifteen minutes (15 min.).
- 2404.16 Except as provided in § 2424, the "Normal Demand Parking Meter Rate Zones" shall include all metered street segments or off street parking facilities under District jurisdiction where Premium Demand Parking Meter Rate Zone does not apply, but where the Director has determined that parking meters are necessary to ensure necessary availability of parking for customers and visitors.
- 2404.17 Except as provided in § 2424, the rates for parking meters in the "Normal Demand Parking Meter Rate Zone" shall be as follows:
- (a) Fifty cents per hour (50¢/hr.) for automobile size spaces; and
  - (b) Twenty-five cents for two hours (25¢/2 hrs) for motorcycle size spaces.
- 2404.18 Except as provided in § 2424, the Director is authorized, by administrative rulemaking, to specify the street segments or off-street public parking facilities which are in each of the Rate Zones established above.
- 2404.19 Except as provided in § 2424, in determining in which Zone an individual block or facility should be included, the Director shall consider the need to promote short term access and the turnover of parking space occupancy necessary for equitable availability and efficient use of public parking spaces near commercial, cultural, educational, medical, recreational and transportation facilities.
- 2404.20 Except as provided in § 2424, all proposed modification to Rate Zone boundaries shall be subject to review and comment by the Advisory Neighborhood Commissions of the affected areas.
- 2404.21 Except as provided in § 2424, changes in meter rates shall become effective as the affected meters are converted to the new rate.
- 2404.22 Except as provided in § 2424, the "Premium Demand Parking Meter Rate Zone" shall include both sides of any street segments, all street segments, and off-street parking facilities under District of Columbia jurisdiction which are contained on the following streets and within the areas defined by the boundaries these streets establish:
- (1) Officer Kevin J. Welsh Memorial Bridge, also known as the 11th Street, Bridge, S.E., at the Anacostia River north to Florida Avenue, N.E.;

- (2) Northwest on Florida Avenue, N.E. to the intersection of 13th Street, N.W.;
- (3) North on 13th Street, N.W. to Irving Street, N.W.;
- (4) West on Irving Street, N.W. to Adams Mill Road, N.W.;
- (5) North on Adams Mill Road, N.W. to Waldbridge Place, N.W.;
- (6) North on Waldbridge Place, N.W. to Park Road, N.W.;
- (7) Northwest on Park Road, N.W. to West Beach Drive, N.W.;
- (8) Northwest on West Beach Drive, N.W. to Broad Branch Road, N.W.;
- (9) North on Broad Branch Road, N.W. to 27th Street, N.W.;
- (10) North on 27th Street, N.W. to Military Road, N.W.;
- (11) East on Military Road, N.W. to Oregon Avenue, N.W.;
- (12) North on Oregon Avenue, N.W. to Western Avenue, N.W.;
- (13) Southwest on Western Avenue, N.W. to Potomac River Shoreline (District of Columbia side);
- (14) Southeast along the Potomac River Shoreline (District of Columbia Side) to the conjunction of the Potomac and Anacostia Rivers;
- (15) South at the conjunction of the Potomac and Anacostia Rivers to the Officer Kevin J. Welsh Memorial Bridge, also known as the 11th Street Bridge, S.E.;
- (16) Piney Branch road, N.W. between Eastern Avenue, N.W. and Blair Road, N.W.;
- (17) Harry Thomas Way, N.E. between R Street, N.E. and Eckington Place, N.E.; and
- (18) Eckington Place, N.E. between Florida Avenue, N.E. to R Street, N.E.

2404.23 Except as provided in § 2424, the "Normal Demand Parking Meter Rate Zone" shall include all metered street segments or off-street parking facilities under District jurisdiction where the Premium Demand Parking Meter Rate Zone

does not apply, but where the Director has determined that parking meters are necessary to ensure necessary parking for customers and visitors.

***By adding a new § 2404.24 to read as follows:***

2404.24 Except as otherwise provided, all civil infractions and their respective fines set forth in this § 2404 shall apply to the provisions in § 2424 associated with the Ballpark Performance Parking Pilot Zone.

***By amending § 2411.1 to read as follows:***

2411.1 Except as provided in §§ 2411.2, 2412, 2414, and 2424, parking a motor vehicle on a residential permit parking street within the same zone shall be restricted, as follows:

- (a) To a consecutive two (2) hour period between 7:00 a.m. and 9:00 p.m. Monday through Saturday within the boundaries of Historic Georgetown, and in Ward 5 in the area of 30th Street, N.E., between South Dakota Avenue and Central Avenue, N.E., and Yost Place, N.E., between Vista Street and Bladensburg Road, N.E., between 7 a.m. and midnight; and between 7 a.m. and 8:30 p.m., in all other areas of the District, unless the motor vehicle displays a valid residential permit parking sticker for the designated areas. The residents of specific blocks may petition to change the times for their residential parking permit designation pursuant to § 2411.14.
- (b) The provisions § 2411.1(a) shall apply only to the extent that funds are available to cover the additional costs of personnel and equipment needed to enforce these restrictions.
- (c) Notwithstanding § 2411.1(a), motor vehicles shall have a valid residential permit parking sticker to park at all times in the following locations:

***By amending § 2411.4 to read as follows:***

2411.4 Except as provided in § 2424, but notwithstanding the notice requirements in §§ 6 and 10 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat 1204; D.C. Code § 1-1506 et seq. (1981)), within each residential permit parking zone, the Director may designate for residential permit parking any block of a street which meets the following criteria:

- (a) It is abutted primarily by residential, recreational, or parkland uses. If a block has residential permit parking, in cases where a building contains both residential land uses, the Director shall determine whether it is

appropriate for some or all of the abutting curb space to be designated for residential permit parking;

- (b) It is impacted by commuter vehicles between 7:00 a.m. and 6:30 p.m., on weekdays, or it is not impacted by commuting vehicles; but it is surrounded by blocks which are designated as residential permit parking blocks;
- (c) A petition has been submitted to the Director supporting its designation as a residential permit parking street. A petition is not necessary, and the Director may initiate a block for inclusion in the program where:
  - (i) There are no residences with addresses on a block which abuts the side or rear of residences included in the program, or on a block which abuts a park or recreational facility;
  - (ii) The block to be designated is within 5 blocks of a commercial district or any other private or public facility that accommodates 500 people or more, such as a theatre, concert hall, convention center, stadium, nightclub, university, or any other major traffic generator; or
  - (iii) There is less than twenty percent of free curb space available for resident parking.
- (d) It meets the objective criteria established by the Director pursuant to § 2412.

***By adding a new § 2411.22 to read as follows:***

- 2411.22 As provided in § 2424.6, within the Ballpark Performance Parking Pilot Zone, parking a motor vehicle on a residential permit parking street shall be restricted, as follows:
- (a) All residential streets east of South Capitol Street, S.E. to a consecutive two (2) hour period between 7:00 a.m. and 9:30 p.m. Monday through Saturday, unless the motor vehicle displays a valid Zone 6 residential permit parking sticker or visitor permit for the designated area.
  - (b) All residential streets west of South Capitol Street, S.E. to a consecutive two (2) hour period between 7:00 a.m. and 12:00 a.m. (midnight) Monday through Sunday, unless the motor vehicle displays a valid Zone 6 residential permit parking sticker or visitor permit for the designated area.
  - (c) On all streets in the Ballpark Zone on the opposite side of the street, as

designated 7:00 a.m. to 9:30 p.m. or 7:00 a.m. to 12:00 a.m. (midnight), no parking may occur unless the motor vehicle displays a valid Zone 6 residential parking permit sticker or visitor parking permit for the designated area.

*By amending § 2412.1 to read as follows:*

2412.1 Except as provided in § 2424, the Director shall establish objective criteria to use in determining whether or not a block of a street is eligible for designation as a residential permit parking block

*By amending § 2413.3 to read as follows:*

2413.3 Except as provided in § 2424, the Director shall issue a residential permit parking sticker upon application, and upon payment of the fee established pursuant to § 2415, only to the owner or the operator of a motor vehicle who resides on property abutting a street designated as a residential permit parking block.

*By amending § 2414.1 to read as follows:*

2414.1 Except as provided in § 2424, the Director or the Chief of Police may issue visitor permits valid for periods up to fifteen (15) days to visitors at an address on a residential permit parking block

*By amending § 2424 to read as follows:*

**2424 PERFORMANCE PARKING PILOT ZONES**

2424.1 The regulations in this § 2424 do not guarantee or reserve curbside parking to any individual or class of drivers within the Ballpark Performance Parking Pilot Zone.

2424.2 The Ballpark Performance Parking Pilot Zone is designated as the area bounded by:

- (a) The Southeast/Southwest Freeway on the north, 10 Street, S.E. on the east, 12<sup>th</sup> Street, S.W. on the west, and the Washington Channel and Anacostia River on the south, including both sides of boundary streets, but not including the Southeast/Southwest Freeway; and
- (b) East Capitol Street on the north, 11<sup>th</sup> Street, S.E. on the east, Washington Avenue, S.W. and South Capitol Street on the west, and the Southeast/Southwest Freeway on the south, including both sides of boundary streets, but not including the Southeast/Southwest Freeway.

- (c) A map of the Ballpark Performance Parking Pilot Zone denoting the boundaries is attached as Appendix 24-1 and also may be found at: [http://ddot.dc.gov/ddot/frames.asp?doc=/ddot/lib/ddot/parking/newrules/meterzones\\_ballpark\\_2008-06-10.pdf](http://ddot.dc.gov/ddot/frames.asp?doc=/ddot/lib/ddot/parking/newrules/meterzones_ballpark_2008-06-10.pdf).

2424.3 To identify locations therein, the Ballpark Performance Parking Pilot Zone is divided into three smaller zones as follows:

- (a) Zone A: South of Southeast/Southwest Freeway, east of 12<sup>th</sup> Street, S.W., north of the Anacostia River and Washington Channel, and west of South Capitol Street;
- (b) Zone B: South of Virginia Avenue, S.E., east of South Capitol Street, north of the Anacostia River, and west of 10<sup>th</sup> Street, S.E.; and
- (c) Zone C: South of East Capitol Street, east of South Capitol Street, Virginia Avenue, S.E. and north, and west of 10<sup>th</sup> Street S.E.
- (d) A map of the Ballpark Performance Parking Pilot Zone denoting Zones A, B, and C is attached as Appendix 24-1 and also may be found at: [http://ddot.dc.gov/ddot/frames.asp?doc=/ddot/lib/ddot/parking/newrules/meterzones\\_ballpark\\_2008-06-10.pdf](http://ddot.dc.gov/ddot/frames.asp?doc=/ddot/lib/ddot/parking/newrules/meterzones_ballpark_2008-06-10.pdf).

2424.4 Notwithstanding §§ 2402, 2404, 2411, 2412, 2413, and 2414, the operator of a motor vehicle shall pay the rate posted on the applicable parking meter and abide by the associated time restrictions in the Ballpark Performance Parking Pilot Zone, except as provided below:

- (a) A motor vehicle shall not park on the following street segments during Ballpark Events:

<b>STREET</b>	<b>BLOCKS</b>	<b>Side</b>
M Street, SE*	Unit, 100, 200, 300, 400, 500, 600, 700, 800, 900, 1000, 1100	North & South
N Street, SE*	Unit	North & South
Potomac Ave, SE*	Unit	North & South
Van Street, SE	1200	East & West
Half Street, SE*	900, 1000, 1100, 1200,	East & West
First Street, SE*	900, 1000, 1100, 1200, 1300, 1400	East & West
New Jersey Ave, SE	800, 900, 1000, 1100, 1200,	East & West
Second Street, SE	800, 900, 1000, 1100, 1200,	East & West

\* No Parking Mandated by the Ballpark Transportation Operations and Parking Plan (2007)

- (b) Motor vehicles displaying a valid Zone 6 residential parking permit or a valid visitor permit shall be exempt from payment of parking meter

rates and from associated time restrictions on the following street segments:

<b>STREET</b>	<b>BLOCKS</b>	<b>Side</b>
F Street, SE	100	South
South Carolina Ave, SE	200	South
D Street, SE (north segment)	200 (2 <sup>nd</sup> Street east to Alley)	North
I (Eye) Street, SE	700	North

2424.5 Notwithstanding §§ 2402, 2404, 2411, 2412, 2413, and 2414, these blocks in the Ballpark Performance Parking Pilot Zone will be included in the Residential Parking Permit Program and all streets west of South Capitol Street will be restricted where appropriate with “Two Hour Parking, 7 A.M. to Midnight, Monday through Sunday, Zone 6 Residential Parking Permit Holders and Zone 6 Visitor Permit Holders Exempt”; and all streets east of South Capitol Street with “Two Hour Parking, 7 A.M. to 9:30 P.M., Monday through Saturday, Zone 6 Residential Parking Permit Holders and Zone 6 Visitor Permit Holders Exempt.”

(a) In Zone A:

<b>STREET</b>	<b>BLOCKS IN RESIDENTIAL PROGRAM</b>	<b>Side</b>
G Street, SW	100, 200, 300, 400, 500, 600, 700, 800	South
H Street, SW	100, 500, 600	South
I (Eye) Street, SW	200, 300, 400, 500, 600	South
K Street, SW	200	South
L Street, SW	200	South
N Street, SW	Unit, 100, 200, 300, 400	South
O Street, SW	Unit, 100, 200, 300, 400	South
P Street, SW	Unit, 100, 200, 300,	South
Q Street, SW	Unit, 100	South
Potomac Ave, SW	Unit,	South
R Street, SW	100	South
Carrollsborg Place, SW	1200, 1400	East
Half Street, SW	1200, 1300, 1400, 1500, 1600	East
Howison Place, SW	1200	East
First Street, SW	1200, 1300, 1400, 1500, 1600	East
Canal Street, SW (east segment)	1200, 1300	West
Canal Street, SW (east segment)	1400	East
Canal Street, SW (west segment)	1200	East
First Street, SW	1200, 1300, 1400, 1500, 1600	East
Delaware Ave, SW	800, 900, 1000, 1100, 1200, 1300	East

2 <sup>nd</sup> Street, SW	1500, 1600	East
3 <sup>rd</sup> Street, SW	700, 800, 900, 1000, 1100, 1400	East
4 <sup>th</sup> Street, SW	700, 800, 1200, 1300, 1400	East
6 <sup>th</sup> Street, SW	700, 800, 900, 1000, 1100, 1200	East
7 <sup>th</sup> Street, SW	700, 800	East

(b) In Zone B:

<b>STREET</b>	<b>BLOCKS IN RESIDENTIAL PROGRAM</b>	<b>Side</b>
Canal Street, SE	100	South
I (Eye) Street, SE	200, 300	South
K Street, SE	200, 300, 400, 500, 600	South
L Street, SE	200, 300, 400, 500, 600, 700	South
First Street, SE	800	East
2 <sup>nd</sup> Street, SE (east segment)	900, 1000, 1100	East
3 <sup>rd</sup> Street, SE	800, 900, 1000, 1100	East
4 <sup>th</sup> Street, SE	900, 1000, 1100	East
5 <sup>th</sup> Street, SE	900, 1000, 1100	East
7 <sup>th</sup> Street, SE	1000, 1100	East

(c) In Zone C:

<b>STREET</b>	<b>BLOCKS IN RESIDENTIAL PROGRAM</b>	<b>Side</b>
C Street, SE	200, 300, 400	South
Seward Square (south)	400, 500	South
D Street, SE	Unit, 100, 300, 400, 500, 600	South
North Carolina Ave, SE	100, 300	South
E Street, SE	100, 200, 300, 400, 500, 600, 700	South
Duddington Place, SE	100	South
South Carolina Ave, SE	300, 600	South
G Street, SE	300, 400, 500, 600, 700	South
I (Eye) Street, SE	600	South
Virginia Ave, SE (south of Freeway)	500, 600, 700	South
South Captiol Street, SE	400	East
New Jersey Ave, SE	400	East
First Street, SE	500	East
2 <sup>nd</sup> Street, SE	200, 300, 400, 500	East
3 <sup>rd</sup> Street, SE	200, 300, 400, 500, 600, 700	East
4 <sup>th</sup> Street, SE	300, 400, 500, 600, 700	East
5 <sup>th</sup> Street, SE	300, 400, 500, 600, 700	East
6 <sup>th</sup> Street, SE	300, 400, 500, 600, 700	East
7 <sup>th</sup> Street, SE	400, 500, 600, 700, 800	East

2424.6 Notwithstanding §§ 2402, 2404, 2411, 2412, 2413, and 2414, these blocks in the Ballpark Performance Parking Pilot Zone will be included in the Residential Parking Permit Program and all streets west of South Capitol Street will be restricted where appropriate with “Zone 6 Resident Parking Only, 7 A.M. to Midnight, Monday through Sunday, Zone 6 Residential Parking Permit Holders and Zone 6 Visitor Pass Permit Holders Exempt”; and all streets east of South Capitol Street with “Zone 6 Resident Parking Only, 7 A.M. to 9:30 P.M., Monday through Saturday, Zone 6 Residential Parking Permit Holders and Zone 6 Visitor Pass Permit Holders Exempt.”

(a) In Zone A:

<b>STREET</b>	<b>BLOCKS IN RESIDENTIAL PROGRAM</b>	<b>Side</b>
G Street, SW	100, 200, 300, 400, 500, 600, 700, 800	North
H Street, SW	100, 500, 600	North
I (Eye) Street, SW	200, 300, 400, 500, 600	North
K Street, SW	200	North
L Street, SW	200	North
N Street, SW	Unit, 100, 200, 300, 400	North
O Street, SW	Unit, 100, 200, 300, 400	North
P Street, SW	Unit, 100, 200, 300,	North
Q Street, SW	Unit, 100	North
Potomac Ave, SW	Unit,	North
R Street, SW	100	North
Carrollsborg Place, SW	1200, 1400	West
Half Street, SW	1200, 1300, 1400, 1500, 1600	West
Howison Place, SW	1200	West
First Street, SW	1200, 1300, 1400, 1500, 1600	West
Canal Street, SW (east segment)	1200, 1300	East
Canal Street, SW (east segment)	1400	West
Canal Street, SW (west segment)	1200	West
First Street, SW	1200, 1300, 1400, 1500, 1600	West
Delaware Ave, SW	800, 900, 1000, 1100, 1200, 1300	West
2 <sup>nd</sup> Street, SW	1500, 1600	West
3 <sup>rd</sup> Street, SW	700, 800, 900, 1000, 1100, 1400	West
4 <sup>th</sup> Street, SW	700, 800, 1200, 1300, 1400	West
6 <sup>th</sup> Street, SW	700, 800, 900, 1000, 1100, 1200	West
7 <sup>th</sup> Street, SW	700, 800	West

(b) In Zone B:

<b>STREET</b>	<b>BLOCKS IN RESIDENTIAL PROGRAM</b>	<b>Side</b>
Canal Street, SE	100	North
I (Eye) Street, SE	200, 300	North
K Street, SE	200, 300, 400, 500, 600	North
L Street, SE	200, 300, 400, 500, 600, 700	North
First Street, SE	800	West
3 <sup>rd</sup> Street, SE	800, 900, 1000, 1100	West
4 <sup>th</sup> Street, SE	900, 1000, 1100	West
5 <sup>th</sup> Street, SE	900, 1000, 1100	West
7 <sup>th</sup> Street, SE	1000, 1100	West

(c) In Zone C:

<b>STREET</b>	<b>BLOCKS IN RESIDENTIAL PROGRAM</b>	<b>Side</b>
C Street, SE	200, 300, 400	North
Seward Square (south)	400, 500	North
D Street, SE	Unit, 100, 300, 400, 500, 600	North
North Carolina Ave, SE	100, 300	North
E Street, SE	Unit, 100, 200, 300, 400, 500, 600, 700	North
Duddington Place, SE	100	North
F Street, SE	100	North
South Carolina Ave, SE	200, 300, 600	North
G Street, SE	300, 400, 500, 600, 700	North
I (Eye) Street, SE	600	North
Virginia Ave, SE (south of Freeway)	500, 600, 700	North
New Jersey Ave, SE	400	West
First Street, SE	400, 500	West
2 <sup>nd</sup> Street, SE	300, 400, 500	West
3 <sup>rd</sup> Street, SE	200, 300, 400, 500, 600, 700	West
4 <sup>th</sup> Street, SE	300, 400, 500, 600, 700	West
5 <sup>th</sup> Street, SE	300, 400, 500, 600, 700	West
6 <sup>th</sup> Street, SE	300, 400, 500, 600, 700	West
7 <sup>th</sup> Street, SE	400, 500, 600, 700, 800	West

2424.7 The performance parking goal for the parking meter rates in the Ballpark Performance Parking Pilot Zone shall based on the following measure:

- (a) Except during Ballpark Events, average curbside occupancy shall be between eighty percent (80%) and ninety percent (90%) for street segments where parking is controlled by parking meters.

2424.8 Notwithstanding §§ 2402, 2404, 2424.7, 2411, 2412, 2413, and 2414, the initial rates for parking meters in the Ballpark Performance Parking Pilot Zone shall be as follows:

- (a) In Zone A:
  - (1) Except for parking meters on Water Street, S.W., the rates for parking meters shall be as follows:
    - (A) Regular rates – Monday-Sunday: 7:00 a.m. – Midnight:
      - (i) One dollar per hour (\$1/hr) for the first hour; and
      - (ii) One dollar and fifty cents per hour (\$1.50/hr) for each additional hour.
      - (iii) Three (3) hours total time limit at parking meter.
    - (B) Ballpark Event rates (Beginning one (1) hour before and ending one-half (½) hour after the Ballpark Event):
      - (i) Two dollars per hour (\$2/hr) for the first hour;
      - (ii) Eight dollars per hour (\$8/hr) for the second and third hours; and
      - (iii) Two dollars per hour (\$2/hr) for the fourth hour.
  - (2) The rates for parking meters on Water Street, S.W., shall be as follows:
    - (A) Regular rates – Monday-Sunday: 7:00 a.m. – Midnight:
      - (i) One dollar and fifty cents per hour (\$1.50/hr) for the first hour.
      - (ii) Two (2) hours total time limit at parking meter.
    - (B) Ballpark Event rates (Beginning one (1) hour before and ending one-half (½) hour after the Ballpark Event):
      - (i) One dollar and fifty cents per hour (\$1.50/hr) for the first hour.
      - (ii) Two (2) hours total time limit at parking meter.
  - (3) Loading zone rates:
    - (A) Monday-Friday: 7:00 a.m. – 4:30 p.m.:

- (i) One dollar for first thirty minutes (\$1/1<sup>st</sup> - 30 min.);
    - (ii) One dollar and fifty cents for second thirty minutes (\$1.50/2<sup>nd</sup> - 30 min.); and
    - (iii) Two dollars for third thirty minutes (\$2/3<sup>rd</sup> - 30 min.).
    - (iv) Ninety (90) minutes total time limit at parking meter.
  - (B) On Monday – Friday, 4:30 p.m. to Midnight, and Sunday – Saturday, 7:00 a.m. to Midnight, parking meter rates and time restrictions apply unless Ballpark Event rates apply.
  - (C) No Loading Zones rates are in effect in Zone A during Ballpark Events.
- (4) Holiday Rates: Unless there is a Ballpark Event, no parking meter rates or time restrictions shall be enforced on holidays. In the event of a Ballpark Event on a holiday, Ballpark Event rates shall apply.
- (b) In Zone B:
- (1) Regular rates – Monday-Saturday: 7:00 a.m. – 9:30 p.m.:
    - (A) One dollar per hour (\$1/hr) for the first hour; and
    - (B) One dollar and fifty cents per hour (\$1.50/hr) for each additional hour.
    - (C) Three (3) hours total time limit at parking meter.
  - (2) Ballpark Event rates apply Monday – Sunday: 7:00 a.m. – 10:00 p.m. (Beginning one (1) hour before and ending one-half (½) hour after the Ballpark Event):
    - (A) During Ballpark Events, the 100 block of H Street, SE shall be priced as follows:
      - (i) Two dollars per hour (\$2/hr) for the first hour;
      - (ii) Eight dollars per hour (\$8/hr) for the second and third hours; and

- (iii) Two dollars per hour (\$2/hr) for the fourth hour.
  - (3) Loading zone rates:
    - (A) Monday-Friday: 7:00 a.m. – 4:30 p.m.:
      - (i) One dollar for first thirty minutes (\$1/1<sup>st</sup> - 30 min.);
      - (ii) One dollar and fifty cents for second thirty minutes (\$1.50/2<sup>nd</sup> – 30 min.); and
      - (iii) Two dollars for third thirty minutes (\$2/3<sup>rd</sup> – 30 min.).
      - (iv) Ninety (90) minutes total time limit in loading zone.
    - (B) On Monday-Friday, 4:30 p.m. to Midnight, and Sunday-Saturday, 7:00 a.m. to Midnight, parking meter rates and time restrictions apply unless Ballpark Event rates apply.
    - (C) No Loading Zones rates are in effect in Zone B during Ballpark Events.
  - (4) Holiday Rates: Unless there is a Ballpark Event, no parking meter rates or time restrictions shall be enforced on holidays. In the event of a Ballpark Event on a holiday, Ballpark Event rates shall apply.
- (c) In Zone C:
- (1) Regular rates:
    - (A) Monday – Saturday, 7:00 a.m. – 9:30 p.m. for 400-700 blocks of Pennsylvania Avenue, SE; 8<sup>th</sup> Street, SE; 700 block of I Street, SE; 700 block of D Street, SE:
      - (i) One dollar and fifty cents per hour (\$1.50/hr) for the first and second hours.
      - (ii) Two (2) hour total time limit at parking meter.

- (B) Monday – Friday, 7:00 a.m. – 6:30 p.m. and Saturday 7:00 a.m. – 3:30 p.m. for 200-300 blocks of Pennsylvania Avenue, SE
- (i) One dollar and fifty cents per hour (\$1.50/hr) for the first and second hours.
  - (ii) Two (2) hour total time limit at parking meter.
- (C) Monday – Saturday, 7:00 a.m. - 9:30 p.m. for First Street, SE, east side between D and E Streets, SE:
- (i) One dollar and fifty cents per hour (\$1.50/hr) for the first and second hours.
  - (ii) Two (2) hour total time limit at parking meter.
- (D) Monday – Saturday, 7:00 a.m. - 9:30 p.m. for D Street, SE between 2<sup>nd</sup> and 3<sup>rd</sup> Streets, SE:
- (i) One dollar and fifty cents per hour (\$1.50/hr) for the first and second hours.
  - (ii) Two (2) hour total time limit at parking meter.
- (E) Monday – Saturday, 7:00 a.m. - 9:30 p.m. for Virginia Ave, SE between 2<sup>nd</sup> Street and 7<sup>th</sup> Street, SE:
- (i) One dollar and fifty cents per hour (\$1.50/hr) for the first and second hours.
  - (ii) Two (2) hour total time limit at parking meter.
- (F) Monday – Saturday, 7:00 a.m. - 9:30 p.m. for the south side of the 100 block of F Street, SE and the south side of the 200 block South Carolina Avenue, SE:
- (i) One dollar and fifty cents per hour (\$1.50/hr) for the first and second hours.
  - (ii) Two (2) hour total time limit at parking meter.
- (G) Monday – Saturday, 7:00 a.m. – 9:30 p.m. for the 700 block of I (Eye) Street, SE:
- (i) One dollar and fifty cents per hour (\$1.50/hr) for the first and second hours.

- (ii) Two (2) hour total time limit at parking meter.
  
- (H) For New Jersey Ave, SE between E Street and Virginia Ave, SE, and Virginia Avenue between South Capitol Street and 7<sup>th</sup> Street, SE (both north & south of the Southeast/Southwest Freeway):
  - (i) Two dollars per hour (\$2/hr) for the first and second hours; and
  - (ii) Eight dollars per hour (\$8/hr) for the third and fourth hours.
  
- (I) Monday – Saturday, 7:00 a.m. – 9:30 p.m. for the south side of the 100 block of F Street, SE and the south side of the 200 block South Carolina Avenue, SE:
  - (i) One dollar and fifty cents per hour (\$1.50/hr) for the first and second hours.
  - (ii) Two (2) hour total time limit at parking meter.
  
- (J) Monday – Saturday, 7:00 a.m. – 9:30 p.m. for the north side of the 700 block of I (Eye) Street, SE:
  - (i) One dollar and fifty cents per hour (\$1.50/hr) for the first and second hours.
  - (ii) Two (2) hour total time limit at parking meter.
  
- (3) Loading zones rates
  - (A) Monday-Friday: 7:00 a.m. – 4:30 p.m.:
    - (i) One dollar for first thirty minutes (\$1/1<sup>st</sup> - 30 min.);
    - (ii) One dollar and fifty cents for second thirty minutes (\$1.50/2<sup>nd</sup> – 30 min.); and
    - (ii) Two dollars for third thirty minutes (\$2/3<sup>rd</sup> – 30 min.).

- (iv) Ninety (90) minutes total time limit in loading zone.
- (B) On Monday-Friday, 4:30 p.m. to Midnight, and Sunday-Saturday, 7:00 a.m. to Midnight, parking meter rates and time restrictions apply unless Ballpark Event rates apply.
- (C) No Loading Zones rates are in effect in Zone C during Ballpark Events.
- (4) Holiday Rates: Unless there is a Ballpark Event, no parking meter rates or time restrictions shall be enforced on holidays. In the event of a Ballpark Event on a holiday, Ballpark Event rates shall apply.

2424.9 In addition to the visitor permits issued pursuant to § 2414, the Director may issue a visitor permit for the Ballpark Performance Parking Pilot Zone whereby a visitor may park in the same manner and to the same extent as a Zone 6 residential parking permit holder. The visitor permit shall not be used in the following manner:

- (a) To avoid the requirement to register a District of Columbia resident's vehicle;
- (b) To avoid paying applicable parking meter rates or abiding by applicable time restrictions for persons entering the Ballpark Performance Parking Pilot Zone for any purpose other than visiting a resident in the Ballpark Performance Parking Pilot Zone;
- (c) Duplicating the visitor permit; or
- (d) Obtaining any compensation (monetary or otherwise) for the use or distribution of the visitor permit.

2424.10 If a receipt from a parking meter is required to park in the Ballpark Performance Parking Pilot Zone, the receipt shall be purchased from the meter closest to the parking space. The receipt shall be valid only when used for parking on the block closest to the parking meter that issued the receipt.

2424.11 If a receipt from a parking meter is required to park in the Ballpark Performance Parking Pilot Zone, and if the receipt has been received for an amount of parking time, no person shall purchase additional time from a parking meter to extend the parking time for the same motor vehicle at the same parking space for which the initial receipt was dispensed.

2424.12 The civil infractions and their respective fines set forth in § 2404 shall apply to the provisions in this § 2424 associated with the Ballpark Performance Parking Pilot Zone, except that fines during Ballpark Events shall be double the fines set forth in § 2404 or set forth elsewhere in this Chapter for non-Ballpark Event times.

***By amending §2427.2 to read as follows:***

2427.2 Streets listed in this subsection are exempt from the parking meter fee moratorium established in section 2426. Exempted streets are located within the boundaries listed in this subsection.

**GEORGETOWN**

STREET	FROM	TO
K St., NW	29th St., NW	37th St., NW (line off)
37th St., NW (line of)	K St., NW	Whitehaven Pkwy, NW
Whitehaven Pkwy, NW	37th St., NW	Wisconsin Ave., NW
Wisconsin Ave., NW	Whitehaven Pkwy, NW	S St., NW
S St., NW	Wisconsin Ave, NW	32nd St., NW
32nd St., NW	S St., NW	R St., NW
R St., NW	32nd St., NW	28th St., NW
28th St., NW	R St., NW	Q St., NW
Q St., NW	28th St., NW	26th St., NW
26th St., NW (line of)	Q St., NW	Rock Creek Pkwy, NW
Rock Creek Pkwy, NW	26th St., NW (line of)	K St., N.W.

**MCI AREA**

STREET	FROM	TO
Indiana Ave., NW	5th St., NW	6th St., NW
6th St., NW	Indiana Ave., NW	Pennsylvania Ave. NW
Pennsylvania	6th St., NW	9th St., NW

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Ave., NW
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9th St., NW      Pennsylvania Ave., NW      K St., NW
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K St., NW        9th St., NW      Massachusetts Ave., NW
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Massachusetts Ave., NW      7th St., NW      5th St., NW
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5th St., NW      Massachusetts Ave., NW      Indiana Ave., NW
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**BALLPARK PERFORMANCE PARKING PILOT ZONE [§ 2424]**

All streets within the Ballpark Performance Parking Pilot Zone, designated as the area bounded by:

The Southeast/Southwest Freeway on the north, 10 Street, S.E. on the east, 12<sup>th</sup> Street, S.W. on the west, and the Washington Channel and Anacostia River on the south, including both sides of boundary streets, but not including the Southeast/Southwest Freeway; and

East Capitol Street on the north, 11<sup>th</sup> Street, S.E. on the east, Washington Avenue, S.W. and South Capitol Street on the west, and the Southeast/Southwest Freeway on the south, including both sides of boundary streets, but not including the Southeast/Southwest Freeway.

Section 2601, **PARKING AND OTHER NON-MOVING INFRACTIONS**, § 2601.1, the “Meter” and “Residential parking permit” sections are revised to read as follows:

Meter (includes fines associated with the Ballpark Performance Parking Pilot Zone) [§ 2404.24, § 2424.12]	In Ballpark <u>Zone</u> [§ 2404.24] [§ 2424.12]	During Ballpark <u>Events</u> [§ 2424.12]
Depositing additional payment to extend time beyond applicable limit [§ 2404.7, § 2424.12]	15.00	15.00    30.00
Illegally parked at [§ 2404.8, § 2424.12]	25.00	25.00    50.00
Failure to deposit payment [§ 2406.6, § 2424.12]	25.00	25.00    50.00
Failure to display multi-space parking meter receipt [§ 2402.10(d), § 2424.12]	50.00	50.00    100.00
Failure to display multi-space parking meter receipt properly [§ 2402.10(c), § 2424.12]	50.00	50.00    100.00
Displaying a multi-space parking meter receipt purchased at a meter		

that does not govern the parking space [§ 2424.10, § 2424.12]		30.00	60.00
Not parked in parking meter space [§ 2404.4, § 2424.12]	25.00	25.00	50.00
Obtaining an additional receipt to extend time for the same motor vehicle in the same parking space for which a prior receipt was already dispensed [§ 2424.11, § 2424.12]		30.00	60.00
Oversized vehicle at [§ 2404.5, § 2424.12]	25.00	25.00	50.00
Overtime at [§ 2404.3, § 2424.12]	25.00	25.00	50.00
Overtime parking in a loading zone [§ 2402.10(a), § 2424.12]	50.00	50.00	
The expiration time indicated on the parking meter receipt displayed on the vehicle has lapsed [§ 2402.10(b), § 2424.12]	50.00	25.00	100.00
...			
Residential parking permit			
Fail to properly display current sticker [§ 2411.6, § 2424.12]	15.00	15.00	30.00
Fail to remove expired sticker [§ 2411.6, § 2424.12]	15.00	15.00	30.00
Improper use of visitor permit [§ 2424.9, § 2424.12]		30.00	60.00
Residential permit parking area, beyond consecutive two hour period without valid permit [§ 2411.1, § 2424.12]	30.00	30.00	60.00

Section 9901, **DEFINITIONS**, § 9901.1, is amended to insert the following new definitions in alphabetical order:

**Ballpark** - Nationals Park baseball stadium.

**Ballpark Event** – Any activity held at the Ballpark expected to draw more than 3,000 attendees. Any Ballpark Event is considered to extend from the period of time beginning one (1) hour prior to the event’s scheduled beginning at the Ballpark until thirty (30) minutes after the event ends.

**Ballpark Performance Parking Pilot Zone (or Ballpark Zone)** – The area designated as the area bounded by The Southeast/Southwest Freeway on the north, 10 Street, S.E. on the east, 12<sup>th</sup> Street, S.W. on the west, and the Washington Channel and Anacostia River on the south, including both sides of

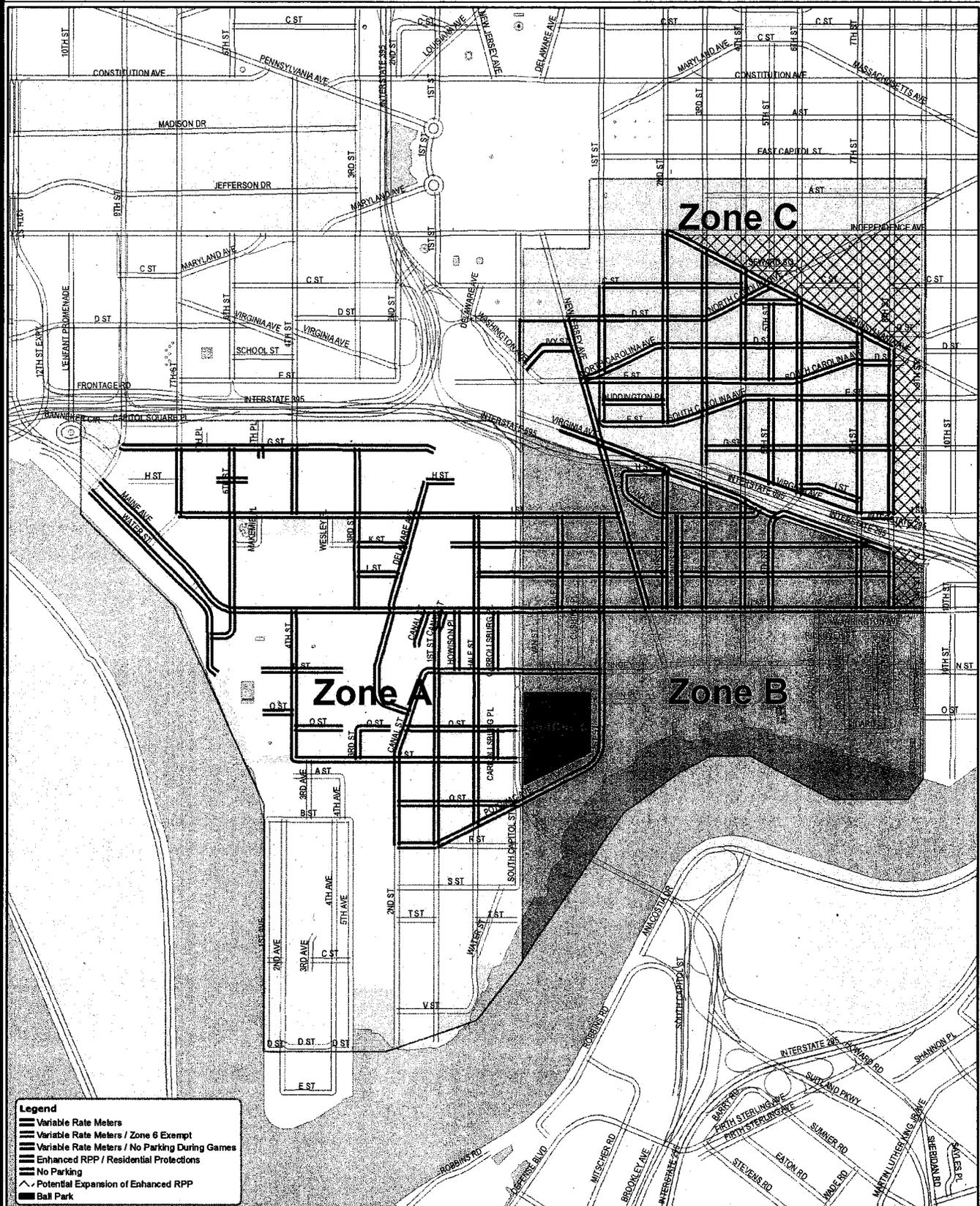
boundary streets, but not including the Southeast/Southwest Freeway; and East Capitol Street on the north, 11<sup>th</sup> Street, S.E. on the east, Washington Avenue, S.W. and South Capitol Street on the west, and the Southeast/Southwest Freeway on the south, including both sides of boundary streets, but not including the Southeast/Southwest Freeway.

**Curbside Occupancy** – Out of the total possible parking spaces on a street segment, the percentage that are occupied over a defined period of time.

**Performance Parking Goal** – Objective performance measure that can be monitored to determine the appropriateness of parking meter rates.

**Performance Parking Pilot Zone** – One of several parking areas defined for special parking pricing and other regulation under the Performance Parking Pilot Zone Emergency Act of 2008, DC Act 17-320, effective March 19, 2008.

NEW PARKING REGULATIONS IN THE BALLPARK DISTRICT



**Legend**

- Variable Rate Meters
- Variable Rate Meters / Zone 6 Exempt
- Variable Rate Meters / No Parking During Games
- Enhanced RPP / Residential Protections
- No Parking
- Potential Expansion of Enhanced RPP
- Ball Park

<p>Scale 1:17,000</p> <p>0 0.035 0.07 0.14 0.21 0.28 0.35 Miles</p>	<p>Date Source: DDOT</p> <p>Map Type: Standard Map</p> <p>Serial No: 000000</p>	<p>Date Created: June 10, 2008</p> <p>Operation Class: Unknown</p> <p>Created By: DDOT GIS</p>	<p><b>Disclaimer:</b></p> <p>This document is intended for informational purposes only. It is not intended to be used as a legal document. The District of Columbia Department of Transportation (DDOT) is not responsible for any errors or omissions in this document. The District of Columbia Department of Transportation (DDOT) is not responsible for any damages, including consequential damages, arising from the use of this document. The District of Columbia Department of Transportation (DDOT) is not responsible for any damages, including consequential damages, arising from the use of this document.</p>	<p> Department of the District of Columbia District Department of Transportation Shirley C. Hensley, Director</p> <p> District Department of Transportation Shirley C. Hensley, Director</p>
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