

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF PROPOSED RULEMAKING

The Acting Director of the Department of Health Care Finance, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02) and section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6)), hereby gives notice of the intent to amend Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR). This rulemaking amends subsection 996 (Provider of Durable Medical Equipment Prosthetics and Orthotics Supplies) and subsection 999 (Definitions) as published in the *D.C. Register* at pages 6153 through 6158 of Volume 55 on May 30, 2008.

The rulemaking would establish new provider requirements for demonstrating proof of a surety bond, submitting a CMS Medicare Supplier Letter, conditions for enrollment, and extending privacy to Medicaid beneficiaries when fitting appliances. The rulemaking would also change the name of the entity responsible for administration of the D.C. Medicaid Program from the now-abolished Medical Assistance Administration within the Department of Health to the newly-established Department of Health Care Finance. The Office of the Inspector General (OIG) of the U.S. Department of Health and Human Services previously conducted an interview and questionnaire to determine the standards used by the District of Columbia (District) when enrolling Durable Medical Equipment, Prosthetics, and Orthotics Suppliers (DME/POS) providers, the extent to which the District verifies these standards during the enrollment process, and the extent to which the District re-enrolls Medicaid DME/POS providers. As a result of the OIG's findings, the District continues to strengthen the management and oversight of Medicaid DME/POS providers by amending this rulemaking.

Final rulemaking action to adopt shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (Public Welfare) is amended as follows:

In Section 996 entitled Provider of Durable Medical Equipment, Prosthetics, and Orthotics Supplies, delete the text of subsections 996.1, 996.2, 996.3, 996.4, 996.13, 996.16, 996.17, 996.18, 996.19, 996.21, 996.22, 996.24, 996.25, and 996.27 and replace it with the following text:

- 996.1 A provider of Durable Medical Equipment, Prosthetics, and Orthotics Supplies (DME/POS) shall be governed by the policies and procedures located in the Provider Handbook for Durable Medical Equipment/Prosthetics and Orthotics Supplies provided by the Department of Health Care Finance (DHCF).
- 996.2 A provider of DME/POS shall:
- (a) Operate a business that furnishes Medicare-covered items in compliance with all applicable federal and District of Columbia licensure and regulatory requirements;

- (b) Be eligible to engage in DME/POS business once the provider has participated in the Medicaid DME/POS New Provider Training conducted by DHCF and signed a Medicaid DME/POS Provider Agreement accepted by DHCF;
- (c) Maintain a physical facility that contains space for storing business records, including the supplier's delivery, maintenance, and beneficiary communication records;
- (d) Be prohibited from using a post office box as a primary business address;
- (e) Be open for business at least forty (40) hours per week in a week that does not contain a holiday where DHCF is closed on a weekday and be open for business at least thirty-two (32) hours per week in a week that does contain a holiday where DHCF is closed on a weekday;
- (f) Maintain a visible sign that states the name of the provider and posted hours of operation;
- (g) Permit on-site inspections to be conducted by the Centers for Medicare and Medicaid Services (CMS), its agents, the Department of Health (DOH), DHCF or the agents of DOH or DHCF to determine supplier compliance with all applicable laws;
- (h) Promote and maintain a beneficiary's right to privacy when services include fittings of DME/POS;
- (i) Provide patient education on the proper use of services and/or equipment;
- (j) Maintain a primary business telephone number listed under the name of the business locally and, if appropriate, a toll-free telephone number for Medicaid beneficiaries. The exclusive use of a beeper number, answering service, pager, telephone line connected to a facsimile machine, or wireless telephone does not satisfy the requirement to have a primary business telephone; and
- (k) Submit a document commonly known as a CMS Medicare Supplier Letter issued pursuant to 42 C.F.R. § 424.510 to evidence enrollment of the supplier in the Medicare program.

996.3 A provider shall maintain, at minimum, comprehensive liability insurance in the amount of three hundred thousand dollars (\$300,000.00) and shall provide proof of such insurance to DHCF with its initial application and annually thereafter.

996.4 Each applicant and provider shall annually post a surety bond to protect against all claims, suits, judgments, or damages including court costs and attorneys fees arising out of the negligence or omissions of the provider in the course of providing services to a Medicaid beneficiary or a person believed to be a Medicaid beneficiary. The amount of the required surety bond is determined as follows:

- (a) A provider who has provided services in the D.C. Medicaid program for at least twelve (12) months shall post a surety bond for the greater of (1) twenty-five percent (25%) of its gross prior-year Medicaid revenue or (2) fifty thousand dollars (\$50,000).
 - (b) A new applicant seeking to become a provider in the D.C. Medicaid program shall submit proof of a surety bond for at least fifty thousand dollars (\$50,000) when submitting a provider application.
 - (c) A provider who has provided services in the D.C. Medicaid program for less than twelve (12) months shall submit proof of a surety bond for at least fifty thousand dollars (\$50,000).
- 996.13 An in-state business shall submit to DHCF a business license, if required, and a Notice of Business Tax Registration pursuant to D.C. Official Code § 47-2026 (2001).
- 996.16 An out-of-state business shall submit all of the following that apply:
- (a) A Certificate of Authority to transact business within the District of Columbia issued pursuant to D.C. Official Code § 29-101.99 et seq. (2001) if the business is a corporation;
 - (b) A Certificate of Registration to transact business within the District of Columbia issued pursuant to D.C. Official Code § 29-1053 et seq. (2001) if the business is a limited liability company;
 - (c) The name of its registered agent for the out-of-state business along with the business address and telephone number of the registered agent;
 - (d) Proof of a physical business address and a business telephone number within the District of Columbia listed under the name of the business for the purpose of providing Medicaid sales and services; and,
 - (e) The Medicaid enrollment provider number from the state where the out-of-state business' principal place of business is located.
- 996.17 DHCF shall review an applicant's signed and completed application within thirty (30) business days from its receipt by DHCF.
- 996.18 DHCF shall return a provider application package to the applicant when DHCF determines the provider application package to be incomplete or to contain incorrect information only two (2) times within a twelve (12) month period.
- 996.19 A DME/POS Provider Enrollment Application may be denied due to any one or more of the following factors:
- (a) The applicant has demonstrated inability to provide services, conduct business, or operate a financially viable entity;

- (b) Current availability of services or supplies for beneficiaries taking into account geographic location and reasonable travel time;
- (c) Number of providers of the same type of service or supplies enrolled in the same geographic area;
- (d) False representation or omission of any material fact in making the application;
- (e) Exclusion, suspension, or termination from any Medicaid program;
- (f) Exclusion, suspension, or termination from any program managed by DHCF;
- (g) Exclusion, suspension, or termination from any Medicare program;
- (h) Conviction of any criminal offense relating to the delivery of any goods or services for a Medicaid beneficiary;
- (i) Conviction of any criminal offense relating to fraud, theft, embezzlement, fiduciary responsibility, or other financial misconduct;
- (j) Violation of federal or District of Columbia laws, rules or regulations governing the D.C. Medicaid program;
- (k) Violation of federal or state laws, rules, or regulations governing a Medicaid program in another state;
- (l) The applicant has been previously found by a licensing, certifying, or professional standards board to have violated the standards or conditions relating to licensure or certification of the services provided; or
- (m) DHCF has returned a provider application package to the applicant that is incomplete or contains incorrect information at least two (2) times in the past twelve (12) months.

996.21

An applicant, whose provider application has been approved to become a D.C. Medicaid DME/POS Provider, is deemed to be enrolled when the applicant has:

- (a) Successfully completed the DME/POS Application that is approved by DHCF;
- (b) Signed a District of Columbia Medicaid DME/POS Provider Agreement that has been accepted by DHCF;
- (c) Participated in a mandatory Medicaid DME/POS New Provider Orientation conducted by DHCF or its agent; and
- (d) Received the DHCF Provider Handbook for Durable Medical Equipment/Prosthetics and Orthotics Supplies from DHCF or its agent.

- 996.22 DHCF may authorize a temporary enrollment of an applicant in the case of a special circumstance when a Medicaid beneficiary requires immediate service, supplies, or equipment, subject to the following limitations:
- (a) Temporary enrollment shall be for one specific occurrence involving an identifiable Medicaid beneficiary;
 - (b) Temporary enrollment shall only be made available one time to a provider; or
 - (c) Temporary enrollment may be allowed in situations when the D.C. Medicaid Program is not the primary payer.
- 996.24 DHCF may adopt and include in the provider agreement other requirements and stipulations that it finds necessary to properly and efficiently administer the D.C. Medicaid Program.
- 996.25 DHCF may make, or cause to be made, payments for medical assistance and related services rendered to Medicaid beneficiaries only when:
- (a) The entity has a current DME/POS Provider Agreement in effect with DHCF;
 - (b) The entity is performing services and supplying goods in accordance with federal and District laws; and
 - (c) The provider is eligible to provide the item or service on the date it is dispensed and the beneficiary is eligible to receive the item or service on the date the item or service is furnished.
- 996.27 DHCF shall have the authority to implement a one hundred eighty (180) day moratorium on the enrollment of DME/POS providers when the action is necessary to safeguard public funds or to maintain the fiscal integrity of the program. This moratorium may be extended or repeated when DHCF determines this action is necessary to further safeguard public funds or to maintain the fiscal integrity of the program.

Subsection 996.28 is added to read as follows:

- 996.28 Any provider agreement for DME/POS in existence on or before May 30, 2008 shall expire on December 31, 2009, unless the provider agreement for DME/POS contains an expiration date on or before January 1, 2010. Any provider of DME/POS whose provider agreement expires on or before January 1, 2010 is eligible to submit a new provider agreement pursuant to the rules specified in Section 996 of Chapter 9 of Title 29 of the D.C. Municipal Regulations.

Add the following definitions to Section 999.1:

999.1 DEFINITIONS

Department of Health Care Finance – The executive department responsible for administering the Medicaid program within the District of Columbia effective October 1, 2008.

DCHF – Department of Health Care Finance

Delete the current definition for Medical Assistance Administration in Section 999.1 and replace it with the following definition:

999.1 DEFINITIONS

Medical Assistance Administration – The administration within the Department of Health responsible for administering the Medicaid program within the District of Columbia until October 1, 2008.

Comments on the proposed rules shall be submitted in writing to John McCarthy, Medicaid Director, Department of Health Care Finance, 825 North Capitol Street, N.E., 5th Floor, Washington, DC 20002, within thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.

THE DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Commissioners of the District of Columbia Housing Authority (DCHA) hereby gives notice, pursuant to D.C. Code Section 6-203 (2007 Ed.), of its intent to adopt the following proposed amendments of selected provisions of Chapter 83 of Title 14 of the District of Columbia Municipal Regulations in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The proposed amendments contain the rules governing: Fair Market Rents.

Amendment: **Amend Chapter 83 of Title 14**, Rent and Housing Assistance Payments, Section 8300.1 Fair Market Rents, to add two new subsections 8300.1 (c) and (d), to read as follows:

Section 8300.1 Fair Market Rents

(c) In the event HUD sets or reduces the fair market rents applicable to DCHA to less than fair market rents at the 50th percentile rent as provided in 8300.1 (b) above, and such reduction in the fair market rents at the 50th percentile rents will either result in a decrease in the range of housing opportunities throughout the District and an increase in concentration of poverty among participants receiving rental assistance in the Housing Choice Voucher Program, or will hinder DCHA's efforts to deconcentrate poverty among participants receiving rental assistance in the Housing Choice Voucher Program, DCHA may submit to the DCHA Board of Commissioners a written justification for maintaining a payment standard based on fair market rents at the 50th percentile rents as provided in 8300.1(b) above.

(d) If DCHA submits a written justification for maintaining a payment standard based on fair market rents at the 50th percentile rents as identified in 8300.1 (c) above, DCHA shall submit a resolution for adoption by the DCHA Board of Commissioners, of a payment standard schedule based on fair market rents set at the 50th percentile fair market rents in accordance with Section 8300.3 below.

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

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

The Director, D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2008-92, dated June 26, 2008, 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 2008 Supp.), hereby gives notice of the intent to adopt the following rules in not less than thirty (30) days from the publication of this notice in the *D.C. Register*. **The purpose of this rulemaking notice is to amend section 910 of Chapter 9, Excepted Service, of Title 6 of the District of Columbia Municipal Regulations (DCMR)**, on the provisions for special consideration for advancement and advancement afforded to graduates of the District government's Certified Public Manager Program and the Mayor's Capital City Fellows Program. Upon adoption, these rules will amend Chapter 9, Excepted Service, of the DCMR, published at 32 DCR 2271 (April 26, 1985) and amended at 36 DCR 7931 (November 17, 1989), 39 DCR 6171 (August 21, 1992), 47 DCR 8093 (October 6, 2000), 50 DCR 4743 (June 13, 2003), 50 DCR 11076 (December 26, 2003), 51 DCR 10416 (November 12, 2004), 51 DCR 10934 (November 26, 2004) – Errata Notice, 53 DCR 5495 (July 7, 2006), and 55 DCR 7953 (July 25, 2008).

CHAPTER 9**EXCEPTED SERVICE**

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

Section 910 is amended to read as follows:

910 SPECIAL CONSIDERATION FOR PLACEMENT AND ADVANCEMENT

- 910.1 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:
- (a) Graduates of the District government's Certified Public Manager Program; and
 - (b) Persons appointed as Capital City Fellows.
- 910.2 As applicable, if appointed, any employee as described in section 910.1 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.).
- 910.3 The Director, D.C. Department of Human Resources, shall issue procedures for the implementation of this section.

Comments on these proposed regulations should be submitted, in writing, to Ms. Brender L. Gregory, Director, D.C. Department of Human Resources, 441 4th Street, N.W. Suite 300S, Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these proposed regulations are available from the above address.

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

The Director, D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2008-92, dated June 26, 2008, 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 of the intent to adopt the following rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The purpose of this rulemaking notice is to amend subsection 3803.3 of Chapter 38, Management Supervisory Service, of Title 6 of the District of Columbia Municipal Regulations (DCMR), on the provisions for special consideration for advancement afforded to graduates of the District government's Certified Public Manager Program and the Mayor's Capital City Fellows Program. **Upon adoption, these rules will amend Chapter 38, Management Supervisory Service, of Title 6 of the DCMR**, published at 48 DCR 2812 (March 30, 2001) and amended at 50 DCR 7747 (September 12, 2003), 51 DCR 9707 (October 15, 2004), 52 DCR 1314 (February 11, 2005), 52 DCR 1913 (February 25, 2005 – Errata Notice), 52 DCR 6840 (July 22, 2005), 54 DCR 4186 (May 4, 2007), and 55 DCR 7974 (July 25, 2008).

CHAPTER 38**MANAGEMENT SUPERVISORY SERVICE**

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

Subsection 3808.3 is amended to read as follows:

3808.3 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:

- (a) Graduates of the District government's Certified Public Manager Program; and
- (b) Persons appointed as Capital City Fellows.

3808.4 The Director, D.C. Department of Human Resources (DCHR), may issue procedures for the implementation of section 3808.3 of this section.

Comments on these proposed regulations should be submitted, in writing, to Ms. Brender L. Gregory, Director, D.C. Department of Human Resources, 441 4th Street, N.W., Suite 300S, Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these proposed regulations are available from the above address.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKINGFORMAL CASE NO. 977, IN THE MATTER OF THE INVESTIGATION INTO
THE QUALITY OF SERVICE OF WASHINGTON GAS LIGHT COMPANY,
DISTRICT OF COLUMBIA DIVISION, IN THE DISTRICT OF COLUMBIA

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,¹ of its intent to adopt Chapter 37, of Title 15 of the District of Columbia Municipal Regulations (“DCMR”), commonly referred to as the Natural Gas Quality of Service Standards (“NGQSS”). The proposed NGQSS sets forth standards to establish requirements for ensuring that a natural gas utility and natural gas service providers operating in the District of Columbia meet an adequate level of quality, reliability, and safety in the natural gas service provided to District of Columbia residents. The Commission gives notice of its intent to take final rulemaking action in not less than thirty (30) days after publication of this Notice of Proposed Rulemaking (“NOPR”) in the *D.C. Register*.²

**CHAPTER 37 NATURAL GAS QUALITY OF SERVICE
STANDARDS**

Secs.	
3700	Purpose and Applicability
3701	Reporting Requirements for Service Outages and Gas Incidents
3702	Reporting and Repairing Requirements for Gas Leaks and Odor Complaints
3703	Reporting and Responding Requirements for Gas Emergencies
3704	Customer Service Standards, Customer Surveys, Service Provisioning
3705	Reliability Standards, Low Pressure Water Infiltration, Underground Damage Prevention, Lost Time Accidents OSHA 300 log
3706	Billing Error Notification
3707	Penalties
3708	Compliance Reporting
3709	Waiver
3799	Definitions

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

² In an effort to propose comprehensive rules, the Commission previously published several NOPRs, received various comments and made modifications to the proposed rules. *See* 54 *D.C. Register* 4489-4507 (2007); 55 *D.C. Register* 65-87 (2008); and 55 *D.C. Register* 9109-9132 (2008).

3700 PURPOSE AND APPLICABILITY

- 3700.1 The purpose of this chapter is to establish standards and requirements for ensuring that a natural gas utility and natural gas service providers operating in the District of Columbia meet an adequate level of quality, reliability, and safety in the natural gas service provided to District of Columbia customers.
- 3700.2 This chapter shall apply to all natural gas utility and natural gas service providers operating in the District of Columbia, subject to the authority of the Public Service Commission of the District of Columbia (Commission).
- 3700.3 All written Natural Gas Quality of Service Standards (“NGQSS”) quarterly and annual reports, studies, surveys, or filings required to be submitted to the Commission shall be docketed under Formal Case No. 977 (“F.C. 977”).

3701 REPORTING REQUIREMENTS FOR SERVICE OUTAGES AND GAS INCIDENTS

- 3701.1 The natural gas utility shall report to the Commission and the Office of the People’s Counsel (OPC) of the District of Columbia all major and non-major natural gas service outages, as well as incidents that result in the loss of human life, personal injury requiring hospitalization, property damage of over \$5,000, or service disruption directly or indirectly arising from or connected with the gas utility’s maintenance or operation, that occur on the natural gas system within the District of Columbia. Additionally, the natural gas utility must include in its operating, maintenance procedures, and emergency plan that it will utilize industry standard testing procedures, such as conducting metallurgical or laboratory analysis of failed components, to identify the root causes of natural gas service outages and to minimize the possibility of recurrence.
- 3701.2 The natural gas utility shall report major service outages by telephone and e-mail to the Commission’s Office of Engineering (OE) and OPC, at the earliest practicable time, but not later than one (1) hour after the utility’s dispatch has been informed of a major service outage, with as much detailed information as possible. To the extent all information required by Section 3701.3 is not available at the time of the initial communication, the natural gas utility shall within two (2) hours of the dispatch supplement its initial report with the additional information. This reporting requirement applies to business and non-business hours.
- 3701.3 Each telephone and e-mail report rendered by the natural gas utility subsequent to a major service outage shall state clearly, at a minimum, the following information:

- (a) The location(s) of the service outage(s), including street addresses;
 - (b) The ward(s) and/or quadrant(s) where the service outage(s) occurred;
 - (c) The estimated number of customers out of service, if known;
 - (d) A preliminary assessment as to the cause(s) of the service outage(s), if known; and
 - (e) The estimated repair and/or restoration time, if known.
- 3701.4 During the course of each major service outage, the utility shall report periodically to OE and OPC regarding the status of the service outage and the utility's progress in restoration efforts. The frequency of such periodic updates to OE shall be jointly determined by the utility and OE at the start of the service outage and/or as modified during the course of the service outage. The utility shall provide an update to OE and OPC prior to making any changes to its estimated restoration time.
- 3701.5 Estimated restoration information, if available, shall be provided to District of Columbia customers by the utility's customer service representatives and by the utility's automated voice response unit.
- 3701.6 The natural gas utility shall file a written report concerning all major service outages with the Office of the Commission Secretary (OCMS) and to OPC within three (3) weeks following the end of a major service outage.
- 3701.7 Each written report concerning a major service outage shall state clearly, at a minimum, the following information:
- (a) The dates and times when the major service outage began and ended;
 - (b) The time the natural gas utility received the first call regarding the outage(s) or became aware of the outage(s);
 - (c) The dates and times when the restoration effort began and ended;
 - (d) The date and time when the maximum number of customers were experiencing a sustained interruption and the total number of customers affected at that time (both on a system-wide basis and for the District of Columbia only);

- (e) The total number of customers that experienced a sustained interruption given in one hour intervals throughout the major service outage (both on a system-wide basis and for the District of Columbia only);
- (f) The total number of customer interruption durations (converted into hours) during the major service outage (both on a system-wide basis and for the District of Columbia only);
- (g) Any information concerning requests made for outside assistance, including the organization(s) to which such requests were made, the date and time of the requests, and the resources requested;
- (h) Any information concerning outside assistance received, including the organization(s) that provided personnel, the date(s) and time(s) of personnel arrivals and departures, all crew personnel certified with operator qualification status by type of work that can be assigned and performed, the number of and types of vehicles provided, the total number of personnel received, the total number of personnel assigned to transmission lines restoration service crews, the total number of personnel assigned to distribution system restoration crews, the total number of personnel assigned to rights of way clearing crews, the total number of personnel assigned to pressure regulation and measurement crews, the total number of personnel assigned to drip pumping crews, and the total number of personnel assigned to service utilization crews;
- (i) Any information concerning the utility's own personnel and resources used in restoration efforts, including the total number and types of vehicles used, the total number of utility personnel involved in the restoration effort, the number of personnel assigned to transmission lines restoration service crews, the total number of personnel assigned to distribution system restoration crews, the total number of personnel assigned to damage assessment crews, the total number of personnel assigned to rights of way clearing crews, the total number of personnel assigned to pressure regulation and measurement crews, the total number of personnel assigned to drip pumping crews, and the total number of personnel assigned to service utilization crews;
- (j) Any system-wide information concerning customer communications, including the hourly call volumes (specifically identifying the total number of customer calls received and the total number of calls answered by the utility during each hour of the service outage), the hourly staffing numbers (specifically identifying the total number of customer service representatives

logged into the call center and supporting phone systems actively taking or waiting to take customer calls), and the telephone service factor provided on an hourly basis during the entire duration of the service outage (specifically identifying the percentage of answered calls that were answered within a 30-second timeframe);

- (k) The total number of customers interrupted and the customer interruption durations (converted into hours) caused by each of the following: water in the main, poor pressure, over and under pressure conditions, frozen meters, pressure regulator malfunctions, lightning damage, ice or snow near pressure regulator vents, and any other major causes (both on a system-wide basis and for the District of Columbia only);
- (l) The total number of each of the following occurring as part of the emergency restoration efforts: the footage of main replaced, number of regulators and meters replaced, the number of transmission and distribution regulator station equipment replaced, relief valve replacements, service piping replacements, the number of mechanical couplings replaced, additional excess flow valves installed on services and other appurtenances or issued for replacement (both on a system-wide basis and for the District of Columbia only);
- (m) Any issues concerning the availability of materials that affected restoration progress and a description of the emergency measures taken to resolve such issues;
- (n) A self-assessment of the utility's restoration efforts in the District of Columbia;
- (o) The total number of customers, and percent of all customers, restored, given in one-hour intervals throughout the major service outage restoration effort (both on a system-wide basis and for the District of Columbia only); and
- (p) An analysis, based upon the availability of the data and all other surrounding circumstances, of the utility's performance in its current restoration efforts as compared to its past restoration efforts, taking into account all relevant factors, such as the severity of the current major service outage in terms of the percent of customers affected on a system-wide or local basis.

3701.8

The utility shall report non-major service outages by telephone and e-mail to OE and OPC at the earliest practicable time, but not later than one (1) hour after the utility's dispatch has been informed of a non-major service

outage, with as much detailed information as possible. To the extent all information required by Section 3701.10 is not available at the time of the initial communication, the natural gas utility shall within two (2) hours of the dispatch supplement its initial report with the additional information. This reporting requirement applies to business and non-business hours.

3701.9 Notwithstanding the above:

- (a) The natural gas utility shall report a single customer service outage of more than eight (8) hours only upon verification that the service outage was caused by some event on the utility's side of the customer's meter;
- (b) No report need be filed if the single customer service outage was caused by some event on the customer's side of the meter; and
- (c) No report need be filed if the outage is the result of planned maintenance activities, provided that the customer was informed prior to the implementation of the maintenance activities.

3701.10 Each telephone and e-mail report concerning a non-major service outage shall state clearly, at a minimum, the following information:

- (a) The location(s) of the service outage(s), including street addresses;
- (b) The ward(s) and/or quadrant(s) where the service outage(s) occurred;
- (c) The estimated number of customers out of service, if known;
- (d) A preliminary assessment as to the cause(s) of the service outage(s), if known; and
- (e) The estimated repair and/or restoration time, if known.

The natural gas utility shall provide regular updates, to OE and OPC, to the initial report as it receives more information.

3701.11 Written reports concerning all non-major service outages shall be submitted by the natural gas utility to OE and OPC within ten (10) days from the date of repair/restoration completion or within three (3) weeks of the event occurrence, whichever comes first.

3701.12 Each written report concerning non-major service outages shall state clearly, at a minimum, the following information as applicable to the given incident:

- (a) A description of the service outage(s) and information as to the cause of the outage(s);
- (b) The location(s) of the service outage(s), including street addresses;
- (c) The ward(s) and/or quadrant(s) where the service outage(s) occurred;
- (d) The time the natural gas utility received the first call regarding the outage(s) or became aware of the outage(s);
- (e) The actual repair and restoration times of the service outage(s);
- (f) The duration of the service outage(s) rounded to the nearest hour and half-hour;
- (g) The estimated number of customers affected by the service outage(s); and
- (h) The steps taken to minimize and/or control the service outage(s).

3701.13

The natural gas utility shall report by telephone and e-mail all incidents that result in the loss of human life and/or personal injury requiring hospitalization, and/or property damage of \$5,000 or more directly or indirectly arising from or connected with the natural gas utility's maintenance or operation, to OE and OPC at the earliest practicable time, but not later than thirty (30) minutes after the utility's dispatch has been informed of the incident, with as much detailed information as possible. To the extent all information required by Section 3701.14 is not available at the time of the initial communication, the natural gas utility shall within two (2) hours of the dispatch supplement its initial report with the additional information. The natural gas utility shall continue providing updates to the Commission and OPC on all incidents as information becomes available. This reporting requirement applies to business and non-business hours.

3701.14

Each telephone and e-mail report concerning the loss of human life and/or personal injury, and/or property damage of \$5,000 or more, shall state clearly, at a minimum, the following information:

- (a) A description of the incident(s);
- (b) The location(s) of the incident(s), including street addresses;
- (c) The ward(s) and/or quadrant(s) where the incident(s) occurred;

- (d) The estimated number of customers and/or persons affected, if known;
- (e) A preliminary assessment as to the cause(s) of the incident(s), if known; and
- (f) The steps the natural gas utility will voluntarily take to provide assistance to consumers.

3701.15 Written reports concerning all incidents that result in the loss of human life and/or personal injury requiring hospitalization, and/or property damage of \$5,000 or more, directly or indirectly arising from or connected with the natural gas utility's maintenance or operation, shall be filed with OCMS and OPC within five (5) days of the event occurrence.

3701.16 Each written report concerning the loss of human life and/or personal injury and/or loss of property in an amount of \$5,000 or more, shall state clearly, at a minimum, the following information:

- (a) A description of the incident(s) and information as to the cause of the incident(s);
- (b) The location(s) of the incident(s), including street addresses;
- (c) The ward(s) and/or quadrant(s) where the incident(s) occurred;
- (d) The time the natural gas utility received the first call regarding the incident(s) or became aware of the incident(s);
- (e) The estimated number of customers and/or persons affected, and street shutdowns;
- (f) The steps the natural gas utility took to provide assistance;
- (g) The amount of time it took for assistance to arrive;
- (h) The total number of injuries and fatalities;
- (i) The total dollar amount of damage caused by the incident(s), if known;
- (j) The results of investigations into the root causes and steps the natural gas utility will implement to prevent such an occurrence in the future; and

- (k) Any other information, including any third party damage, that may be requested by the Commission.

The natural gas utility shall update the initial written report within thirty (30) days of the event occurrence.

3702 REPORTING AND REPAIRING REQUIREMENTS FOR GAS LEAKS AND ODOR COMPLAINTS

3702.1 The natural gas utility's reporting and repair requirements for gas leaks and odor complaints shall follow four steps: (i) respond to all leaks and odor complaints; (ii) notify, by e-mail and telephone, OE and OPC; (iii) provide periodic updates to the initial notification; and (iv) submit written reports on the results of the leak detection and repair, and odor complaints. The leak detection, classification, and repair personnel should meet the federal training requirements for natural gas operations, maintenance, and emergencies (49 Code of Federal Regulations, Part 192).

3702.2 The natural gas utility shall respond to (be at the site of) all gas leaks or customer reported odor complaint calls involving a strong gas leak, carbon monoxide, illness, broken service main or gaslight, fire in progress, explosion, uncontrolled appliance heat, steam or noise, gas blowing or hissing, second call, or pressure alarm, or presents an immediate or probable hazard to persons or property and requires immediate repair or continuous action until the conditions are no longer hazardous within fifty (50) minutes after the utility's dispatch has been informed about the leak and/or odor complaint during business or non-business hours. The natural gas utility shall respond to (be at the site of) all gas leaks or customer reported odor complaint calls involving a "medium" gas leak, noise, or a leak that is recognized as being non-hazardous at the time of detection, but requires scheduled repair based on probable future hazard, within sixty (60) minutes after the utility's dispatch has been informed about the leak and/or odor complaint during business or non-business hours. For gas leaks and customer reported odor complaint calls involving a "slight" gas leak, or a leak that is non-hazardous at the time of detection and can be reasonably expected to remain non-hazardous, a response shall involve making a determination as to the severity of the gas leaks and/or reported odor complaints and indicating to the customer/caller when a representative will be at the site, but not later than ninety-five (95) minutes after the utility's dispatch has been informed about the leak and/or odor complaint during business and non-business hours. The natural gas utility shall provide the results to OE and OPC on a semi-annual basis. The natural gas utility shall provide explanations if these time limits are exceeded.

3702.3 The natural gas utility shall report to OE and OPC by telephone and e-mail all natural gas leaks and customer reported odor complaint calls at the earliest practicable time, but not later than one (1) hour after the utility's dispatch has been informed about and determined that the odor complaint resulted from a leak and/or the dispatch has determined that a leak has occurred on the utility's gas system, with as much detailed information as possible. To the extent all information required by Section 3702.5 is not available at the time of the initial communication, the natural gas utility shall within two (2) hours of the dispatch supplement its initial report with the additional information. Gas leaks found inside customers' facilities and odor complaints where no leaks are found shall not be reported. This reporting requirement applies to business and non-business hours.

3702.4 Each gas leak shall be categorized as Grade 1, 2, or 3. All leaks shall be classified with the following criteria:

- (a) Grade 1: A leak that presents an immediate or probable hazard to persons or property, and requires immediate repair or continuous action until the conditions are no longer hazardous;
- (b) Grade 2: A leak that is recognized as being non-hazardous at the time of detection, but requires scheduled repair based on probable future hazard; and
- (c) Grade 3: A leak that is non-hazardous at the time of detection and can be reasonably expected to remain non-hazardous.

3702.5 Each telephone and e-mail report of a Grade 1 leak or a leak due to a gas-related odor complaint shall state clearly, at a minimum, the following information:

- (a) A description of the type of leak(s);
- (b) The location of the leak(s), including street addresses;
- (c) The ward(s) and/or quadrant(s) where the leak(s) occurred;
- (d) The estimated number of customers and/or persons whose service was disrupted, if known;
- (e) A preliminary assessment as to the cause of the leak(s), if known; and
- (f) The estimated time to repair the leak, if known.

The natural gas utility shall provide regular updates, to OE and OPC, to the initial report as it receives more information.

- 3702.6 Each e-mail report of a Grade 2 leak shall state clearly, at a minimum, the following information:
- (a) A description of the type of leak(s);
 - (b) The location of the leak(s), including street addresses;
 - (c) The ward(s) and/or quadrant(s) where the leak(s) occurred;
 - (d) A preliminary assessment as to the cause of the leak(s), if known; and
 - (e) The estimated time to repair the leak(s), if known.
- 3702.7 Each e-mail report of a Grade 3 leak shall state clearly, at a minimum, the following information:
- (a) A description of the type of leak(s);
 - (b) The location of the leak(s), including street addresses; and
 - (c) The ward(s) and/or quadrant(s) where the leak(s) occurred.
- 3702.8 All Grade 1 leaks shall be promptly repaired. If not repaired immediately, upon detection, the utility shall submit a weekly written report to OE and OPC regarding the status of and the utility's progress in completing the leak repair. The natural gas utility shall inform OE and OPC prior to making any changes to the estimated leak repair time(s).
- 3702.9 Each written report concerning Grade 1 leaks or customer reported odor complaint leaks shall state clearly, at a minimum, the following information as applicable to the incident:
- (a) Address and location of the leak or odor;
 - (b) A description of the type of leak;
 - (c) Pressure involved (Transmission, High Pressure, Medium Pressure or Low Pressure);
 - (d) The ward(s) and/or quadrant(s) where the leak has been identified;
 - (e) The time the utility received the first call regarding a gas leak or leak detection;
 - (f) The cause of the leak, if known;

- (g) The actual repair time; and
 - (h) Any action taken to date.

- 3702.10 Grade 2 leaks shall be monitored and reevaluated at least once every six months until cleared with no further signs of leak. Depending on the location and magnitude of the leakage condition, reevaluation may be made earlier than six months. If reevaluation of a Grade 2 leak indicates potential hazard, it shall be scheduled for repair within five (5) working days of completed evaluation. For Grade 2 leaks that do not pose an immediate hazard, the utility shall schedule repairs within thirty (30) days. Grade 2 leaks shall be repaired or cleared within one calendar year, but no later than 15 months from the date the leak was reported.

- 3702.11 Grade 3 leaks shall be monitored and reevaluated during the next scheduled leak survey, or within 15 months of the date reported, whichever occurs first, until the leak is regraded or cleared with no further signs of leak.

- 3702.12 Written reports for leaks classified as Grade 2 and Grade 3 shall be filed semi-annually with OCMS and OPC. The report shall be submitted forty-five (45) days after the reporting period, starting with the six-month reporting period following the NGQSS's adoption in Title 15 of the District of Columbia Municipal Regulations (DCMR).

- 3702.13 Each semi-annual written report concerning Grade 2 leaks, shall state clearly, at a minimum, the following information as applicable:
 - (a) Address and location of the leak or odor;
 - (b) A description of the type of leak;
 - (c) Pressure involved (Transmission, High Pressure, Medium Pressure or Low Pressure);
 - (d) The ward(s) and/or quadrant(s) where the leak was identified;
 - (e) Assessment as to the cause of the leak(s); and
 - (f) The schedule and the status of repair of all Grade 2 leaks consistent with the standard provided in Section 3702.10.

- 3702.14 Each semi-annual written report concerning Grade 3 leaks, shall state clearly, at a minimum, the following information as applicable:
 - (a) Address and location of the leak or odor;
 - (b) A description of the type of leak;

- (c) Pressure involved (Transmission, High Pressure, Medium Pressure or Low Pressure);
- (d) The ward(s) and/or quadrant(s) where the leak was identified; and
- (e) The status of reevaluation and repair schedule, if applicable, of Grade 3 leaks, consistent with Section 3702.11.

3702.15 The natural gas utility shall create and maintain a database for all gas leaks and customer reported gas-related odor complaints. The database shall be referred to as the "Leak Identification, Detection and Repair, and Odor Complaints (LIDAROC)". The database shall contain, at a minimum, the grade of the leak, type of leak, location of the leak, the ward and/or quadrant where the leak occurred, estimated number of customers whose services were disrupted because of the leak, the cause of the leak, response time, estimated and actual time to repair the leak, and actions taken. The natural gas utility shall incorporate all natural gas leaks and customer reported odor complaint calls into the database within five (5) days of receipt of the gas-related odor complaint and/or determination that a leak has occurred on its gas system. The database shall be organized in a way that permits analysis of the data by the time taken to respond, repair, and resolve the gas leaks.

3702.16 The natural gas utility shall update the database after it has repaired and/or resolved the leak and customer reported odor complaints and shall submit an electronic and a hard copy of the database to OE and OPC on a quarterly basis.

3703 REPORTING AND RESPONDING REQUIREMENTS FOR GAS EMERGENCIES

3703.1 The natural gas utility shall immediately dispatch personnel to the site of the natural gas-related emergency, and shall arrive at the site within fifty (50) minutes of receiving an emergency call during normal business and non-business hours.

3703.2 All natural gas-related emergencies shall be reported by telephone and e-mail to OE and OPC at the earliest practicable time, but not later than thirty (30) minutes after the utility's dispatch has been informed that an emergency has occurred, with as much detailed information as possible. The natural gas utility shall provide updates to the initial report as it receives more information. This reporting requirement applies to business and non-business hours.

3703.3 Each telephone and e-mail report of a gas-related emergency shall state clearly, at a minimum, the following information:

- (a) The location of the gas-related emergency, person making the report and contact information;
- (b) The ward(s) and/or quadrant(s) where the emergency occurred;
- (c) The estimated number of customers impacted by the emergency, and street shutdowns, if known;
- (d) A preliminary assessment as to the cause of the gas-related emergency, if known;
- (e) The time between becoming aware of the emergency and responding (arriving at the emergency site) to the emergency, if known;
- (f) The estimated time to clear the emergency, if known;
- (g) The estimated time to repair pipeline facilities affected by the emergency, and/or restore service, if known; and
- (h) A preliminary assessment as to any injuries, deaths, or personal property damage, if known.

3703.4 During the course of a natural gas-related emergency on the natural gas utility's system, the utility shall report periodically by telephone and e-mail to OE and OPC, regarding the status of the natural gas emergency and the utility's progress in clearing the emergency and making the site safe. The utility shall provide updates or progress on the gas-related emergency every hour until the emergency is resolved.

3703.5 Written reports concerning all natural gas-related emergencies shall be filed with OCMS and OPC within five (5) days of the event occurrence. The utility shall provide updates to its written report as it receives more information.

3703.6 Each written report concerning a natural gas-related emergency shall state clearly, at a minimum, the following information:

- (a) The location of the natural gas emergency;
- (b) The date and time when the natural gas-related emergency started;
- (c) The date and time when the emergency crew arrived at the scene;
- (d) The date and time when the natural gas-related emergency ended;

- (e) An assessment as to the cause, origin, and contributing factors of the natural gas related emergency; and
- (f) The steps the utility is taking to minimize the possibility of a recurrence of the incident.

3704 CUSTOMER SERVICE STANDARDS, CUSTOMER SURVEYS, SERVICE PROVISIONING

3704.1 The natural gas utility shall maintain a customer service (walk-in) office physically located in the District of Columbia.

3704.2 The natural gas utility shall conduct annual customer surveys to assess customer satisfaction with the quality of customer service provided by the company to DC customers. The gas utility shall provide the results of the surveys to OE and OPC. The customer satisfaction surveys should be conducted from (1) a statistically representative sample of residential customers; and (2) customers randomly selected from those customers who have contacted the company's customer service department within the year in which service is being measured. The representative sample shall be drawn from customers contacting the company's customer service department in the previous year and shall be conducted with a sample of customers who contacted the natural gas utility by walk-in, telephone, or e-mail. The survey instrument and the method shall be pre-approved by OE. The natural gas utility shall include the results from all available previous years of the survey up to a maximum of ten years in the Quality of Service Standard Performance Report ("QSSPR").

3704.3 The natural gas utility shall gather data and report statistics regarding the number of service calls met on the same day requested or scheduled, excluding instances where a customer misses a mutually agreed upon time. The natural gas utility shall report the percentage of scheduled service appointments met by the utility on the same day requested. Service appointment data shall be compiled and aggregated monthly. A minimum performance standard of 95% on a quarterly basis will apply. The natural gas utility shall record the delay, in hours and/or days, in responding to requested or scheduled service calls. The natural gas utility shall provide the results on service calls met and delayed to OE and OPC on an annual basis in the QSSPR.

3704.4 The natural gas utility shall gather data on the percentage of meters that are actually read by the company on a monthly basis. Eligible meters include both residential and commercial accounts. On-cycle meter reads performance standard of 95% on a quarterly basis will apply. The natural gas utility shall provide the results to OE and OPC on an annual basis in the QSSPR.

- 3704.5 The natural gas utility shall perform the customer requested meter testing on a timely basis, but at a minimum shall test 97% of meters, on a quarterly basis, on pre-scheduled test time mutually agreed upon by the utility and the customer. The natural gas utility shall submit its results to OE and OPC on an annual basis in the QSSPR.
- 3704.6 The natural gas utility shall answer at least seventy (70) percent of all customers' phone calls within thirty (30) seconds, on a system-wide basis, and shall maintain records delineating customer phone calls answered by a utility representative or an automated operator system. The natural gas utility shall measure and report on an annual basis to OE and OPC the average customer wait time for being transferred from an automated operator system to a utility representative.
- 3704.7 The natural gas utility's statistics concerning customer calls answered shall exclude calls made during periods of major telecommunications failures, periods of labor disruptions, and periods of major service outage.
- 3704.8 The natural gas utility shall maintain a call abandonment rate, on a system-wide basis, below ten (10) percent on a quarterly basis, and shall report the information to OE and OPC on an annual basis in the QSSPR.
- 3704.9 The natural gas utility's call abandonment statistics shall exclude calls made during periods of major telecommunications failures, periods of labor disruption, and periods of major service outage.
- 3704.10 If the natural gas utility fails to meet the standards set forth in Sections 3704.3, 3704.4, 3704.5, 3704.6 or 3704.8, for two consecutive quarters, it shall be required to develop a corrective action plan.
- 3704.11 The corrective action plan shall describe the cause(s) of the utility's non-compliance with Section 3704.3, 3704.4, 3704.5, 3704.6 or 3704.8, describe the corrective measure(s) to be taken to ensure that the standard is met or exceeded in the future, and set a target date for completion of the corrective measure(s).
- 3704.12 Progress on current corrective action plans shall be included in the utility's annual QSSPR, filed with OCMS, OE, and OPC by April 30 of each year starting with the year after the adoption of the NGQSS's in Title 15 of the District of Columbia Municipal Regulations (DCMR).
- 3704.13 On a quarterly basis, the natural gas utility shall complete installation of 80% of new residential service requests within ten (10) business days of the start date for the new installation.

- 3704.14 The start date for a new installation shall be designated as the first business day after all of the following events have taken place:
- (a) The customer's valid billing information is received;
 - (b) The site is ready for service (cleared, graded, staked, etc.);
 - (c) The service connection fee is paid, if applicable;
 - (d) The gas safety inspection is received;
 - (e) The security deposit is paid, if applicable;
 - (f) All mains and regulating facilities are installed;
 - (g) Any required public space excavation is completed;
 - (h) Any delays due to weather emergencies do not intervene; and
 - (i) All rights-of-way and permits are obtained, and all One-Call requirements have been met.
- 3704.15 The natural gas utility shall submit a written report on its performance pursuant to Section 3704.13 every six (6) months. The report shall be submitted to OE and OPC, forty-five (45) days after the six-month reporting period ends, starting with the six month period following the adoption of the NGQSS's in Title 15 of the District of Columbia Municipal Regulations (DCMR).
- 3704.16 After the submission of four (4) consecutive reports pursuant to Section 3704.15, the Commission may modify the frequency of the reporting.
- 3704.17 The reports pursuant to Section 3704.15 shall clearly state the total number of new residential service installation requests received during the relevant reporting period, and for the new residential installation service requests received, the percentage of new residential service connections that were completed in accordance with Section 3704.13.
- 3704.18 If the natural gas utility fails to meet the standard set in Section 3704.13 in any two consecutive quarters, it shall develop a corrective action plan.
- 3704.19 The corrective action plan shall describe the cause(s) of the utility's non-compliance with Section 3704.13, describe the corrective measure(s) to be taken to ensure that the standard is met or exceeded in the future, and set a target date for completion of the corrective measure(s).

3704.20 Progress on any current corrective action plans shall be included in the utility's annual QSSPR.

3704.21 The natural gas utility shall report the actual performance obtained during the reporting period in the annual QSSPR of the following year.

3705 RELIABILITY STANDARDS, LOW PRESSURE WATER INFILTRATION, UNDERGROUND DAMAGE PREVENTION, LOST TIME ACCIDENTS OSHA 300 LOG

3705.1 The natural gas utility shall establish a gas main ranking index to determine its gas main segments (including associated service lines) most in need of improvement or replacement. Factors associated with the main ranking index for making improvement and replacement decisions include, poor leak history, poor cathodic protection or poor gas main conditions determined from visual observations, poor pressure in the area, interruption of service due to water infiltration, segment affected by city or state public improvement projects, etc. At least once each calendar year, the natural gas utility shall rank and identify areas of piping networks of its natural gas operating system requiring improvements to eliminate segments most susceptible to leakage, failure, supply interruptions or failure to meet its minimum design pressure and volume deliverability requirements. The utility shall establish a performance ranking by area, on a scale of one to ten, one being the poorest performing segment. The natural gas utility shall provide the results to OE and OPC on a biennial basis.

3705.2 Each calendar year, the natural gas utility shall perform the necessary analysis for the issues identified in Section 3705.1, and provide plans for eliminating the ten worst performing segments due to low pressure or interruption problems. The natural gas utility shall file the results with OCMS and OPC on a biennial basis.

3705.3 The natural gas utility shall respond to all underground utility locate requests and locate their facilities in accordance with the damage prevention laws established within the District of Columbia and the U.S. Department of Transportation. The utility shall maintain an accurate count of all locate requests, responses to locate requests, number of gas main and service lines inaccurately marked which resulted in damages or construction delays, number of locations which the utility failed to mark as required by the damage prevention rules, number of calls not made by excavation contractors for accurately marked utility lines as determined by calls or reports of incidents to underground utilities, damages caused by excavators or third party to gas facilities (both above ground and underground), third party responsible for the damage, and the root cause(s)

of the damage. An annual report shall be filed with OCMS and OPC in the QSSPR.

- 3705.4 The natural gas utility shall monitor high volume condensate drips on its low pressure distribution network to minimize service continuity disruption. In no case shall a natural gas customer outage due to condensate accumulation be more than 5% of the low-pressure customer base during two consecutive winter periods. The natural gas utility shall prepare a remediation plan within 120 days of exceeding the 5% standard of service interruption, for the approval of the Commission, and provide a target date for completion of the recommended repair to the low-pressure piping network. The natural gas utility shall file the results with OCMS and OPC on an annual basis in the QSSPR.
- 3705.5 The standard in 3705.4 may be changed or modified, at a later date, based on a study of trends in service interruptions.
- 3705.6 The natural gas utility shall measure annually its Lost Time Accident Rate as reported in the Occupational Safety and Health Administration (“OSHA”) 300 Log Summary of Occupational Injuries and Illnesses. The natural gas utility may provide this information on a system-wide basis with a breakdown for each of the jurisdictions. The natural gas utility shall provide the results to OE and OPC on an annual basis in the QSSPR.

3706 BILLING ERROR NOTIFICATION

- 3706.1 The natural gas utility and all natural gas service providers must inform OE and OPC when a billing error has affected 100 or more customers or when the number of affected customers is equal to or more than two (2) percent of the natural gas utility’s or natural gas service provider’s customer base, whichever is fewer. The natural gas utility and natural gas service providers with a customer base of fewer than 100 customers shall report errors when two (2) or more customers are affected.
- 3706.2 The natural gas utility and all natural gas service providers shall submit an initial billing error notification within one (1) business day of discovering or being notified of the error. After submitting the initial notification, the natural gas utility and natural gas service providers must submit a follow-up written report within 14 calendar days and a final written report within 60 calendar days.
- 3706.3 The initial billing error notification shall be sent via e-mail to OE and OPC.

- 3706.4 The initial billing error notification shall contain the following information:
- (a) Type(s) of billing error(s) found;
 - (b) Date and time the billing error(s) was discovered;
 - (c) How the natural gas utility service provider discovered the error(s); and
 - (d) Approximate number of customers affected.
- 3706.5 The follow-up written report shall contain the following information:
- (a) Type(s) of billing error(s);
 - (b) Date and time of the billing error(s);
 - (c) Number of customers affected;
 - (d) Cause of the error and status of any and all corrective action(s) taken; and
 - (e) Timeline for completing any and all other required corrective action(s) which must include the provision of refunds and/or credits, no later than 60 days after the billing error(s) was discovered, as necessary to correct the billing error(s).
- 3706.6 The final written report shall contain the following information:
- (a) Type(s) of billing error(s);
 - (b) Date and time of billing error(s);
 - (c) Number of customers affected and the dollar amount involved;
 - (d) Duration of the billing error(s);
 - (e) Corrective action(s) and preventative measure(s) taken; and
 - (f) Lessons learned, if any.
- 3706.7 Upon receipt of the final written report, the Commission shall determine whether any further investigation is necessary.

3706.8 No later than 60 days after the date the natural gas utility or natural gas supplier discovers or is notified of the billing error(s), it shall notify each affected customer of the following:

- (a) The nature of the error;
- (b) The amount by which the customer's previous bill(s) were inaccurate; and
- (c) If appropriate, the steps the natural gas utility or natural gas service provider will take to ensure that the customer receives a full refund if overbilled or make payment if underbilled no later than the date specified in Section 3706.5(e).

The natural gas utility shall inform customers by letter to describe the nature of the billing error and the corrective action that the company intends to implement. If a refund or outstanding balance appears on a customer's billing statement, the gas utility shall provide a clear description and explanation of the reason(s) for the error.

3707 PENALTIES

3707.1 Failure to comply with this Chapter may result in the penalties described in D.C. Official Code § 34-706 for failure to comply with Commission rules and regulations.

3708 COMPLIANCE REPORTING

3708.1 The natural gas utility and all natural gas service providers shall collect and retain accurate data demonstrating compliance with the measures in this chapter. Data are to be collected on a monthly basis in a format established by Commission Order.

- (a) The natural gas utility and all natural gas service providers shall submit monthly compliance data 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. A cumulative annual report for the current reporting year shall also be submitted by January 30 of the following year.

- (b) If the natural gas utility or any natural gas service provider fails a measure in a quarterly report, the natural gas utility or natural gas service provider 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 natural gas utility or natural gas service provider 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 requesting such a waiver.
- (c) The natural gas utility and all natural gas service providers shall retain reporting data for seven years in the event of an audit by the Commission.

3709 WAIVER

3709.1 The Commission may, in its discretion, waive any provisions of Chapter 37 of this title.

3799 DEFINITIONS

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

Abandoned Calls – calls to the natural gas utility that are terminated by the customer after the customer selects the menu option and is placed in the queue, but before the call is answered by the utility customer representative or any other automated response system.

Normal Business Hours – Monday through Friday, 8:00 a.m. to 9:00 p.m., and Saturday, 8:00 a.m. to 4:30 p.m. (except major holidays). The main office serves customers Monday through Friday (except holidays) from 8:30 a.m. to 4:30 p.m. The Anacostia office accepts bill payments by check or money order only, Monday through Friday (except holidays), 8:00 a.m. to 4:00 p.m. All other hours including, holidays and Sunday are designated as non-normal business hours.³

Call Abandonment Rate – the annual number of calls to the utility’s call center or business office that were abandoned divided by the total number of calls the utility received.

Call Answering – a process whereby natural gas utility representative, voice response unit, or other automated operator system is ready to render assistance or ready to accept information necessary to process a customer’s call. An acknowledgement that the customer is waiting on the line does not constitute an answer.

³ This definition of business and non-business hours applies to Washington Gas Light Company.

Commission – Public Service Commission of the District of Columbia.

Condensate Drips – devices installed on low pressure natural gas distribution system at its lowest elevation to facilitate collection of condensates such as ground water or other liquids infiltrating into the gas piping.

Dispatch – unit of the gas utility that receives calls, disseminates information and assigns service calls to technicians and field crews, and acknowledges their feedback during responses to gas leaks, incidents and emergencies.

Distribution Line – gas pipelines that provide natural gas delivery service to customers.

Gas Emergency – any sudden and unexpected situation where leakage, blowing gas, loss of gas pressure, an overpressure condition, or loss of telemetry or control-system has caused or may cause serious injury or damage to life and/or property. Examples of emergencies include gas-fed fires, explosions involving gas, escaping gas, unplanned supply interruptions, releases of hazardous material, carbon monoxide poisonings, and odorant releases.

Gas Pipeline Facility – a pipeline, a right of way, a building, or equipment used in transporting natural gas or treating natural gas during its transportation.

Gas Related Emergency Call – a telephone call where the caller believes that he or she is confronting special circumstances that might lead to bodily and/or system-related damage if circumstances remain unaddressed. Examples include, but are not limited to, gas detected inside or near buildings, fire/explosion near or directly involving gas pipeline facility with or without escaping gas, vehicle accidents, natural disasters, unplanned supply interruption, uncontrolled escape of gas, or other conditions that may warrant immediate response.

High Pressure (HP) System – a gas pipeline in which the gas pressure is higher than the pressure provided to the customer. Typically, high pressure pipelines operate over 60 pounds per square inch gauge (psig) and are not transmission pipes.

Interruption Duration – the period of time, truncated or rounded to the nearest minute, during which a sustained interruption occurs.

Incident – an event involving the release or potential release of natural gas that interrupts normal operations or causes a crisis. A reportable incident is an event that involves the release of gas and a death or injury requiring in-patient hospitalization or property damage of at least \$5,000. Incidents include damages or costs in excess of \$5,000, or an event receiving media attention or that requires closing a public street.

Low Pressure (LP) System – a gas pipeline in which the pressure is substantially the same as the pressure provided to the normal residential customer. Low pressure lines normally operate at 7.8 inches water column.

Major Service Outages – customer interruption occurrences and durations during time periods when 2% or more (2,500) of the natural gas utility’s District of Columbia customers are without service and the restoration effort due to this service outage takes more than twenty-four (24) hours.

Medium Pressure (MP) System – a gas pipeline in which the gas pressure is higher than the pressure provided to the customer. Typically, medium pressure pipelines operate higher than the LP System (at 7.8 inches water column) up to 60 pounds per square inch gauge (psig).

Natural Gas – is a gaseous flammable fossil fuel consisting primarily of methane.

Natural Gas Service Provider – a natural gas supplier, including an Aggregator, Broker, or Marketer, who generates or produces natural gas, sells natural gas, or purchases, brokers, arranges, or markets natural gas for sale to customers.

Natural Gas Utility – the company that owns or controls the distribution facilities required for the transmission and delivery of natural gas to customers, provides sales service and delivery of distribution service of natural gas, and is regulated by the Public Service Commission of the District of Columbia.

Non-major Service Outages – customer service outages caused by the failure of devices such as pressure regulators, underground excavation damage, or meter freeze-ups lasting more than eight (8) hours, regardless of how many customers are affected; or customer service outages affecting over 25 but fewer than 2,500 customers, regardless of duration.

Occupational Safety and Health Administration (OSHA) 300 log (OSHA 300 Log) – a log of all recordable occupational injuries and illnesses on forms approved by OSHA. This form is called OSHA 300 Log. It is regularly updated by OSHA. OSHA 300 Log should be used to record each case within seven (7) calendar days after the employer received information that a recordable work-related injury or illness has occurred.

Office of the Commission Secretary (OCMS) – Secretary of the Public Service Commission of the District of Columbia.

Office of Engineering (OE) – Office of Engineering of the Public Service Commission of the District of Columbia.

Office of the People’s Counsel (OPC) – Office of the People’s Counsel of the District of Columbia.

Outside Assistance – resources not routinely used by a natural gas utility for service restoration. Natural gas utility resources transferred among utility operating areas are not considered outside assistance.

PSIG – pounds per square inch gauge.

Regulator Station – a facility for controlling the pressure and flow of natural gas serving a distribution system.

Specified Minimum Yield Strength (SMYS) – the minimum yield strength, expressed in pounds per square inch, for steel pipe manufactured in accordance with a listed specification. Usually, a test stresses the pipeline to a predetermined percentage of its SMYS. This is a common term used in the oil and gas industry for steel pipe used under the jurisdiction of the United States Department of Transportation.

Telephone Service Factor – the percentage of calls answered within a specified amount of time. For example, if the service level time is set at thirty (30) seconds and 70 percent of calls are answered in less than 30 seconds, then the telephone service factor is 70.

Transmission Line – a pipeline, other than a gathering line, that: (1) transports gas from a gathering line or storage facility to a gas distribution center, storage facility, or large volume customer that is not down-stream from a gas distribution center; (2) operates at a hoop stress of 20 percent or more of SMYS; or (3) transports gas within a storage field.

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

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Directors of the District of Columbia Water and Sewer Authority ("the Board"), pursuant to the authority set forth in Section 216 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111, §§ 203(3), (11) and 216; D.C. Code §§ 34-2202.03(3), (11) and 34-2202.16, Section 6(a) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Code § 2-505(a), hereby gives notice of its intention to amend Title 21 of the District of Columbia Municipal Regulations (DCMR) Chapter 41, Retail Water and Sewer Rates, by adding new subsections 4101.2 - 4101.5 to the existing section 4101, Rates for Sewer Service, and adding a new section 4104, Customer Classifications for Water and Sewer Rates, and to amend Title 21 DCMR Chapter 4, Contested Water and Sewer Bills by adding new subsections 402.7 and 402.8 to the existing Section 402.

The Board expressed its intention to amend the DCMR through the addition of these sections and subsections at its regularly scheduled Board meeting held February 5, 2009 pursuant to Board Resolution # 09-38. Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Comments on these proposed rules should be submitted, in writing, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* to, Linda R. Manley, Secretary to the Board, District of Columbia Water and Sewer Authority, 5000 Overlook Ave., S.W., Washington, D.C. 20032.

Rulemaking Proposal

The following rulemaking action is proposed:

Title 21 DCMR, Chapter 41, RETAIL WATER AND SEWER RATES, Section 4101 RATES FOR SEWER SERVICE, is amended by adding new subsections 4101.2-4101.5 to read as follows:

- 4101.2 The Impervious Surface Area Charge shall be based upon the Equivalent Residential Unit (ERU). An ERU is defined as one-thousand (1,000) square feet of impervious surface area, taking account of a statistical median of residential properties.
- 4101.3 All residential customers shall be assessed one (1) ERU.
- 4101.4 All non-residential customers shall be assessed ERU(s) based upon the total amount of impervious surface area on each lot. This total amount of impervious

surface shall be converted into ERU(s), truncated to the nearest one-hundred (100) square feet.

- 4101.5 Impervious Only Properties are properties that do not currently have metered water/sewer service (i.e. parking lots) and require the creation of new accounts. Impervious Only Properties with more than twenty-five (25) ERU's shall be billed monthly; those with less than twenty-five (25) ERU's shall be billed every six (6) months.

Title 21 DCMR, Chapter 41, RETAIL WATER AND SEWER RATES, is amended by adding new section 4104, CUSTOMER CLASSIFICATION FOR WATER AND SEWER RATES, to read as follows:

4104 CUSTOMER CLASSIFICATIONS FOR WATER AND SEWER RATES

- 4104.1 The customer classifications for water and sewer rates shall consist of a residential class and a non-residential class:

- (a) Residential – a single-family dwelling used for domestic purposes; a condominium or apartment unit where each unit is served by a separate service line and is individually metered and the unit is used for domestic purposes; or a multifamily structure of less than four apartment units where all the units are served by a single service line that is master metered.
- (b) Non-residential – all customers not within the residential class.

Title 21 DCMR, Chapter 4, CONTESTED WATER AND SEWER BILLS, Section 402, INITIATING A CHALLENGE, is amended by adding new subsections 402.7 and 402.8 to read as follows:

- 402.7 Non-residential owners or their agents may seek an impervious surface area charge adjustment if the owner or agent can establish that the property has been assigned to the wrong rate class, the impervious service area used in the computation of the charge is incorrect or if the ownership information is incorrect.
- 402.8 Non-residential owners or their agents shall submit a site survey, prepared by a registered professional land surveyor, showing impervious surfaces on the site and other information that may be requested by WASA.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING**

Z.C. Case No. 04-05

(Text and Map Amendments – 11 DCMR -- Hill East District (Reservation 13))

The Zoning Commission for the District of Columbia, pursuant to its authority under §§ 1 and 3 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code §§ 6-641.01 and 6-641.03), hereby gives notice of its intent to amend Title 11 of the District of Columbia Municipal Regulations (“DCMR”) by adding a new Chapter 28, containing the provisions of a new zone district entitled the “Hill East District.” The Commission also hereby gives notice of its intention to amend the Zoning Map of the District of Columbia by mapping the new Hill East District over the area identified on the records of the District of Columbia Surveyor as Federal Reservation 13.

Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The following rulemaking action is proposed:

A. The Zoning Map of the District of Columbia is proposed to be amended as follows (references to a street or a square refer to proposed streets and squares as depicted on Map A attached to the Office of Planning report dated June 1, 2007, filed in Zoning Commission Case Number 04-05, which may be viewed at the D.C. Office of Zoning, 441 4th Street, N.W., Suite 210-S, Washington, D.C. 20001):

1. Rezone from unzoned to HE-1 all properties with frontage onto 19th Street, between Independence Avenue and Massachusetts Avenue.
2. Rezone from unzoned to HE-2 all properties with frontage onto squares with frontage on 20th Street, and with the exception of parcel H, those properties with frontage onto squares with frontage on 21st Street.
3. Rezone from unzoned to HE-3 all properties with frontage onto squares with frontage on Water Street.
4. Rezone from unzoned to HE-4 all property within squares N and O.

Any streets referenced are located or will be located in the Southeast quadrant

B. Title 11 DCMR (Zoning) is proposed to be amended as follows:

1. Add a new Chapter 28, “Hill East (HE) District”

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CHAPTER 28 HILL EAST (HE) DISTRICT

Section

- 2800 General Provisions and Purposes
- 2801 Zoning Commission Review
- 2802 Uses As A Matter Of Right
- 2803 Special Exceptions – Specific Uses Permitted
- 2804 Special Exceptions – General Provisions
- 2805 Prohibited Uses
- 2806 Accessory Uses
- 2807 Inclusionary Housing Requirements
- 2808 Bulk And Density
- 2809 Roof Structures
- 2810 Yards And Lot Size
- 2811 Ground Floor Use – Where Required And Permitted
- 2812 Ground Floor Preferred Uses – Design Standards
- 2813 Design Requirements – All Locations
- 2814 Design Requirements For Buildings Located On Primary Streets
- 2815 Parking, Loading, And Vehicle Access

2800 GENERAL PROVISIONS AND PURPOSES

- 2800.1 The Hill East (HE) District is applied to Federal Reservation 13, which is designated for mixed use development on the Future Land use Map of the Comprehensive Plan and the Reservation 13 Hill East Waterfront Master Plan, as approved by the Council of the District of Columbia on October 15, 2002, and is the subject of the Hill East Waterfront Design Guidelines, June 2008.
- 2800.2 Any reference to a street or a square refers to proposed streets and squares as depicted in Map A attached to the Office of Planning report dated June 1, 2007, filed in Zoning Commission Case Number 04-05, which may be viewed at the D.C. Office of Zoning.
- 2800.3 Any reference to a street shall be deemed to include a reference to the Southeast (S.E.) quadrant.
- 2800.4 For the purposes of this chapter the terms:
 - (a) “Primary street” shall mean Independence Avenue, Massachusetts Avenue, and Water Street; and
 - (b) “Secondary street” shall refer to 19th Street, 20th Street, 21st Street, Burke Street, C Street, and C Place.

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2800.5 The boundaries of the HE District correspond to Federal Reservation 13, which is bounded by Independence Avenue on the north, 19th Street on the west, Water Street on the east, and the Congressional Cemetery on the south.

2800.6 The HE District is divided into the following four subdistricts for the purpose of lot occupancy, floor area ratio (“FAR”) and building height:

- (a) HE-1 (19th Street) Subdistrict, which includes squares with frontage onto 19th Street, between Independence Avenue and Massachusetts Avenue);
- (b) HE-2 (20th Street) Subdistrict, which includes squares with frontage on 20th Street;
- (c) HE-3 (Water Street) Subdistrict, which includes squares with frontage on Water Street; and
- (d) HE-4 (Corrections) Subdistrict, which includes squares N and O.

2800.7 The purposes of the Hill East District are to:

- (a) Connect and integrate Reservation 13 with adjacent neighborhoods, and the new waterfront park along the Anacostia River;
- (b) Utilize the site to meet a diversity of public needs, including health care, education, employment, government services and administration, retail, recreation and housing;
- (c) Extend the existing pattern of local streets to and through the site to create simple, well-organized city blocks and appropriately-scaled development;
- (d) Maintain a human-scale of building heights that match existing neighborhood buildings and increase in height as the site slopes downward to the Anacostia waterfront;
- (e) Connect the Hill East neighborhood and the city at large to the waterfront via tree-lined public streets, recreational trails, and increased access to waterfront parklands;
- (f) Demonstrate environmental stewardship through environmentally-sensitive design, ample open spaces, and a waterfront park that serve as public amenities and benefit the neighborhood and the city;
- (g) Promote the use of mass transit by introducing new uses near Metro stations, and create an environment where the pedestrian, bicycle, and auto are all welcome,

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complementary, and unobtrusive, reducing the impact of traffic on adjacent neighborhood streets;

- (h) Limit the Central Detention Facility and the Correction Treatment Facility to areas south of Massachusetts Avenue; and
- (i) Create attractive “places” of unique and complementary character including:
 - i. A new, vital neighborhood center around the Metro station at C and 19th Streets that serves the unmet neighborhood commercial needs of the community and extends to the waterfront with a new residential district;
 - ii. Massachusetts Avenue as a grand Washington ‘boulevard’ in the tradition of the L’Enfant plan;
 - iii. A district for city-wide uses and services, such as health care, education, and recreation along Independence Avenue; and
 - iv. A grand public waterfront park incorporating monumental places and quiet natural retreats accessed by a meandering park drive set back from the Anacostia River.

2800.8 The Hill East District shall constitute the Zoning Regulations for the geographic area referred to in § 2800.1. Where there are conflicts between this chapter and other parts of the Zoning Regulations, the provisions of the Hill East District shall govern.

2800.9 Unless specifically exempted, the requirements of the HE District shall apply to all new buildings and to all other buildings where any additions, alterations, or repairs within any 12-month period exceed 100 percent of the assessed value of the building as set forth in the records of the Office of Tax and Revenue as of the date of a building permit application, provided:

- (a) The cost basis for alterations or additions to an existing building shall be the amount indicated by the applicant on the application for a building permit; and
- (b) In the case of an addition, the requirements and incentives of this Chapter apply only to the addition.

2801 ZONING COMMISSION REVIEW

2801.1 The Zoning Commission shall review the design of all new buildings, or additions to existing buildings for consistency with the design guidelines set forth at §§ 2812 through 2814 and with the general purposes of the Overlay as stated in § 2800.7 of this Chapter.

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- 2801.3 For good cause shown, the Zoning Commission, in its discretion, may waive one or more of the design standards set forth in §§ 2812 through 2814.
- 2801.4 The Commission may hear and decide any additional requests for special exception or variance relief needed for the subject property, including the special exceptions provided for in this Chapter. Such requests shall be advertised, heard, and decided together with the application for Zoning Commission review and approval.
- 2801.5 At the time of filing an application with the Zoning Commission, the applicant shall pay the filing fee specified in § 3180.1(b)(16), plus such fees as apply to any additional zoning relief requested. The provisions of § 3181 relating to the administration of fees shall apply, except that the applicant may appeal any decision of the Director regarding the fee schedule to the Zoning Commission, which shall decide the appeal as a preliminary matter to hearing the application.

2802 USES AS A MATTER OF RIGHT

- 2802.1 The following uses shall be permitted as a matter of right in the HE District, provided that no use may be located on a site that has not been designated for that use by the Master Plan:
- (a) Residential dwellings, including row dwellings, flats, and multiple dwellings;
 - (b) Retail sales and services involving the sale, lease, or servicing of new or used products to the general public, or which provide personal services or entertainment, or provide product repair or services for consumer and business goods;
 - (c) Private club, restaurant, fast food restaurant, or food delivery service; provided, a fast food restaurant or food delivery service shall not include a drive-through;
 - (d) Church or other place of worship;
 - (e) Office;
 - (f) Clinic;
 - (g) Government offices and facilities,
 - (h) Public recreation and community center;
 - (i) Public school;

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- (j) Police Department Local Facility;
- (k) Fire Station;
- (l) Park or open space;
- (m) Library, public or private;
- (n) Museum;
- (o) Hotel or inn;
- (p) Child/elderly development center;
- (q) Community-based residential facility to be occupied persons with a handicap plus resident supervisors, as permitted by right in residence and commercial districts pursuant to 11 DCMR §§ 201.1 (o) and 330.5 (i)
- (r) Community-based residential facility not described in subparagraph (o), subject to the following limitations:
 - i. Youth residential care home, community residence facility, or health care facility for not more than 6 persons, not including resident supervisors or staff and their families.
 - ii. Youth residential care home or community residence facility for 7 to 15 persons, not including resident supervisors or staff and their families; provided that there shall be no property containing an existing community-based residential facility for 7 or more persons either in the same Square or within a radius of 500 feet from any portion of the subject property: and
 - iii. Emergency shelter for not more than 4 persons, not including resident supervisors or staff and their families.
- (s) Adult day treatment facility; and
- (t) Antenna, subject to the standards and procedures that apply to the particular class of antenna pursuant to Chapter 27 of this Title.

2803 SPECIAL EXCEPTIONS – SPECIFIC USES PERMITTED

- 2803.1 The uses identified in this section shall be permitted in the HE District as a special exception if approved by the Zoning Commission pursuant to the general standard of § 3104, the criteria set forth in § 2804.2 and such specific conditions as are stated below.

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2803.2 Hospitals, provided:

- (a) The hospital use will be located only on Square B and/or C;
- (b) Need of the facility is demonstrated through a Certificate of Need, including a review and report by the Department of Human Services on the need for the facility and on the ability of the specific design of the facility to meet that need; and
- (c) There is a detailed plan for the facility and accessory buildings, showing the location, height, and bulk of all improvements, including but not limited to buildings, parking and loading facilities, screening, signs, capacities of the various facilities, and public utility facilities.

2803.3 Health care facility that meets the definition for, and is licensed as, a skilled care facility or intermediate nursing care facility under the Health Care Facilities and Community Residence Regulations.

2803.4 Community service center to accommodate organizations created for the purpose of improving the social or economic well-being of the residents of the area in which the center is proposed to be located, which may include, but not be limited to, centers for job training, family counseling, consumer cooperatives, and such other facilities as are similar in nature and purpose, provided that the community service center shall not be organized for profit, and no part of its net income shall inure to the benefit of any private shareholder or individual.

2803.5 Private school, public or private college, or university provided:

- (a) The use shall be located only on Squares A, B, C, and/or K and subject to the height, floor area ration and lot occupancy standards of each respective square;
- (b) A private school use, including residences for teachers and/or staff of a private school, subject to the standards and requirements of § 206; and
- (c) A college or university use, including a college or university hospital, dormitory, fraternity, or sorority house, proposed to be located on the campus of a college or university, subject to the standards and requirements of §§ 210.2 and 210.4 through 210.9

2803.6 Community-based residential facility not described in § 2802.1 (o) and which falls within one of the following categories:

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- (a) Youth residential care home or community residence facility for nine to 15 persons, not including resident supervisors or staff and their families, subject to the standards and requirements of § 303;
 - (b) Emergency shelter for five to 15 persons, not including resident supervisors or staff and their families, subject to the standards and requirements of § 305; and
 - (c) Youth rehabilitation home, adult rehabilitation home, or substance abusers' home for one to 15 persons, not including resident supervisors or staff and their families, subject to the standards and requirements of § 306.
- 2803.7 Additions to or the replacement of the Central Detention Facility and the Correction Treatment Facility, provided:
- (a) Any addition or replacement to the facilities shall be located only on Squares N and O; and
 - (b) The application for Zoning Commission approval shall include a detailed plan for the facilities and accessory facilities, showing the location, height, and bulk of all improvements, including but not limited to buildings, parking and loading facilities, screening, signs, and utility facilities.
- 2803.8 Basic utilities and supporting infrastructure facilities, such as an electrical substation, natural gas regulator station, pump station, telephone exchange, or any co-generation facility, subject to such setbacks and screening requirements as the Commission deems necessary for protection of the surrounding neighborhood.
- 2803.9 Antennas, subject to the standards and procedures that apply to the particular class of antenna in Chapter 27 of this Title.
- 2803.10 Above grade parking structures, provided:
- (a) Structures shall not directly front onto a primary or secondary street;
 - (b) Preferred uses, as defined in § 2811.1, shall occupy the ground floor to a minimum depth of thirty (30) feet to separate parking areas from the primary or secondary street; and
 - (c) Upper floors shall be separated from a primary or secondary street by commercial or residential uses.
- 2803.11 New or expanded at-grade surface parking lots accessory to an existing use or building for a period of five (5) years which may be renewed a maximum of two (2) times.

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2803.12 Fast Food Establishment and Fast Food Delivery Services, provided:

- (a) The use shall not include a drive-through;
- (b) The use shall be designed and operated so as not to become objectionable to neighboring properties because of noise, sounds, odors, lights, hours of operation, or other conditions;
- (c) There shall be adequate facilities to allow deliveries to be made and trash to be collected without obstructing public rights-of-way or unreasonably obstructing parking spaces, aisles, or driveways on the site; and
- (d) The Commission may impose conditions pertaining to design, screening, lighting, soundproofing, off-street parking spaces, signs, method and hours of trash collection, or any other matter necessary to protect adjacent or nearby property.

2803.13 Other principal uses that are not permitted by § 2802, but not prohibited by § 2805 shall be permitted in the HE District as a special exception provided the Commission considers that the use is appropriate in furthering the purposes of the HE District.

2804 SPECIAL EXCEPTIONS – GENERAL PROVISIONS

2804.1 In addition to the general standard set forth in § 3104, and any specific conditions set forth in § 2803, an applicant for a special exception within the HE District shall demonstrate compliance with § 2804.2.

2804.2 For all proposed uses, the applicant must demonstrate:

- (a) Parking and traffic conditions associated with the operation of a proposed use shall not adversely affect adjacent or nearby uses;
- (b) Noise associated with the operation of a proposed use shall not adversely affect adjacent or nearby uses;
- (c) The proposed building will comply with the applicable ground floor use and design requirements of §§ 2811 through 2814;
- (d) The building's architectural design will enhance the urban design features of the immediate vicinity in which it is located; and
- (e) Vehicular access and egress will be located and designed so as to encourage safe and efficient pedestrian movement, minimize conflict with principal pedestrian

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ways, function efficiently, and create no dangerous or otherwise objectionable traffic conditions.

2804.3 The D.C. Office of Planning shall refer applications for special exceptions filed pursuant to this section to the D.C. Department of Transportation and shall submit a report for each such application addressing:

- (a) Whether the proposed use furthers the purposes of the HE District;
- (b) The relationship of the proposed use to other planning considerations for the area and the District of Columbia as a whole, including the plans, programs, and policies of other departments and agencies of the District government;
- (c) The impact of the proposed use on neighboring properties; and
- (d) Any other matters that are within the Office of Planning's jurisdiction.

2804.5 The Commission may impose requirements pertaining to design, appearance, signs, massing, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the purposes of the HE District.

2805 PROHIBITED USES

2805.1 The following uses are prohibited within the HE District as both principal and accessory uses, unless otherwise noted:

- (a) At-grade surface parking lots, except as provided in § 2803.11.
- (b) Vehicle sales;
- (c) Vehicle repair and servicing, including full-serve and mini-serve gas stations, unattended key card stations, car washes, quick lubrication services, and vehicle emission test sites;
- (d) Any industrial use first permitted in an M District;
- (e) Sexually-oriented business establishment;
- (f) Any establishment that has as its principal use the administration of massages;
- (g) Self-service storage establishment that provides separate storage areas for individual or business uses; and

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- (h) Drive-through establishment (any establishment where goods are sold/rented or services rendered, directly to occupants of motor vehicles while in the vehicles).

2806 ACCESSORY USES

2806.1 Except as prohibited by § 2805, accessory uses (including parking, but not at-grade accessory surface parking lots) buildings, or structures customarily incidental and subordinate to the principal uses permitted in § 2802 shall be permitted in the HE District as a matter of right subject to the limitations in Chapter 25 of this Title.

2807 INCLUSIONARY HOUSING REQUIREMENTS

2807.1 Development that is subject to the Inclusionary Zoning Program set forth in Chapter 26 shall be constructed according to the provisions set forth in § 2808, notwithstanding any bonus they may be granted by Chapter 26.

2808 BULK AND DENSITY

2808.1 Except as provided in § 2808.4, the maximum permitted lot occupancy, building height, floor area ratio, and number of stories in an HE Subdistrict shall be as set forth in the following table:

HE Subdistrict	Maximum Lot Occupancy	Building Height		Maximum FAR	Maximum No. of Stories
		Min.	Max.		
HE-1 (19 th St)	80%	26 ft	50 ft	3.0	4
HE-2 (20 th St)	75%	40 ft	80 ft	4.8	7
HE-3 (Water St)	80%	80 ft	110 ft	7.2	10
HE-4 (Corrections)	75%	-	90 ft	6.0	8
Square E (Park)	20%	-	26 ft	0.2	-

2808.2 The following FAR limitations on non-residential uses apply within the HE District, but only in the Squares listed below:

Square	Maximum Non-residential FAR
F	0.8
G	1.0
H	0.5
I	3.0

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- 2808.3 Building height shall be measured from the lowest curb level along a street frontage abutting the lot.
- 2808.4 A hospital located in the HE-2 Subdistrict may exceed eighty (80) feet in height, to a maximum of one hundred ten (110) feet, if approved as a special exception by the Zoning Commission pursuant to § 2803.2.
- 2808.5 Buildings or structures that abut the HE-1 subdistrict shall provide a 12-foot setback from the subdistrict boundary line for any part of the building or structure that exceeds 50 feet in height.
- 2808.6 Buildings or structures that abut the HE-2 subdistrict, or have street frontage on Burke Street, C Street, C Place, or Massachusetts Avenue, shall provide a 12-foot setback for any part of the building that exceeds 80 feet.
- 2808.7 Architectural embellishments, such as spires, towers, domes, pinnacles or minarets; penthouses over elevator shafts, ventilator shafts; antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes, pursuant to the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6.601.09 (2001).
- 2808.8 The portion of Square A devoted to St. Coletta's School shall be subject to Zoning Commission Order 03-21.

2809 ROOF STRUCTURES

- 2809.1 The provisions of §§ 411 and 400.7 shall apply to roof structures in the HE District.
- 2809.2 The gross floor area of roof structures permitted under this section shall not be counted in determining the amount of off-street parking that is required by Chapter 21.

2810 YARDS AND LOT SIZE

- 2810.1 No side yard shall be required. If a side yard is provided, its minimum width shall be eight feet.
- 2810.2 Except as provided in § 2810.3, no rear yard shall be required for wholly non-residential buildings.
- 2810.3 Notwithstanding § 2801.2, a an entirely non-residential building shall have a rear yard if:
- (a) The building's rear wall faces a wall of a residential building;

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- (b) The distance between the rear wall of the non-residential building and a wall of the residential buildings is 40 feet or less; and
 - (c) A window located on the non-residential building's rear wall would afford a direct view into the interior of the residential building through one or more of the latter's windows.
- 2810.4 The rear yard required by § 2810 shall have a depth equal to the distance between the rear wall of the non-residential building and the facing wall of the residential building.
- 2810.5 All residential buildings shall provide a rear yard in accordance with either § 2810.6 or § 2810.7
- 2810.6 When the residential portion of a building begins at or below grade, the building shall provide a rear yard with a minimum depth of three inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof, but not less than twelve (12) feet.
- 2810.7 When the residential portion of a building begins above grade, the building shall provide a rear yard with a minimum depth of three (3) inches per foot of vertical distance from the horizontal plane at which the residential use begins to the highest point of the main roof, but not less than twelve (12) feet. The rear yard shall be provided at and above the horizontal plane at which residential use begins.
- 2810.7 The minimum lot area for row dwellings shall be 1,800 square feet with a minimum lot width of 18 feet.

2811 GROUND FLOOR USE – WHERE REQUIRED AND PERMITTED

- 2811.1 For the purposes of the HE District, the term “preferred uses” shall mean retail, entertainment, cultural, or commercial uses.
- 2811.2 The following locations are required to devote not less than sixty-five (65) percent of the ground floor frontage to preferred uses and main building entrances, or lobbies to office and residential uses, and shall comply with the design requirements of §§ 2812 through 2814:
- (a) The west face of Square F (19th Street frontage):
 - (b) The northwest corner of Square G;
 - (c) The southeast corner of Square J at Massachusetts Avenue and Water Street, facing the monumental circle;

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- (d) The northeast corner of Square M at Massachusetts Avenue and Water Street, facing the monumental circle; and
 - (e) All Independence Avenue and Massachusetts Avenue frontages;
- 2811.3 The following locations are permitted to have ground floor preferred uses, provided that the building shall be constructed so that not less than sixty-five (65) percent of the ground floor frontage will be devoted to preferred uses and main building entrances, or lobbies to office and residential uses and shall comply with the design requirements of §§ 2812 through 2814:
- (a) All frontages on 19th Street;
 - (b) All frontages on Burke Street;
 - (c) The C Street frontage of Square H, facing the park in Square E, for a maximum length of 200 feet from Square H's northeast corner at the intersection of C Street and 21st Street;
 - (d) The 21st Street frontage of Square D;
 - (e) The southeast corner of Square D, which faces the intersection of C Street and Water Street;
 - (f) The northeast corner of Square I, which faces the intersection of C Street and Water Street; and
 - (g) All frontages on Water Street.

2812 GROUND FLOOR PREFERRED USES – DESIGN STANDARDS

- 2812.1 Wherever preferred uses, as defined in §2811.1, are required or allowed pursuant to §§ 2811.2 and 2811.3, such ground floor preferred uses shall:
- (a) If located on a corner, wrap around the corner to a minimum depth of 20 feet on the side street;
 - (b) Occupy the ground floor to a minimum depth of 30 feet;
 - (c) Have a minimum clear floor-to-ceiling height of fourteen (14) feet, measured from the finished grade, for the area of the ground floor dedicated to preferred uses;

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- (d) The street-facing facades of buildings on primary streets shall devote not less than seventy-five (75) percent per individual use or fifty (50) percent of the length and fifty (50) percent of the surface area of the street wall at the ground level to windows associated with preferred uses or windows associated with main building entrances; and
 - (e) The street-facing facades of mixed-use or non-residential buildings on secondary streets shall devote not less than seventy-five (75) percent per individual use or thirty (30) percent of the length and thirty (30) percent of the surface area of the street wall at the ground level to windows associated with preferred uses or windows associated with main building entrances.
- 2812.2 The windows required by § 2812.1(d) shall have clear or clear/low emissivity glass allowing transparency to a depth of twenty (20) feet into the preferred ground level space with bottom sills no more than four (4) feet above the adjacent sidewalk grade.

2812.3 Such windows must allow views from within the building to the street.

2813 DESIGN REQUIREMENTS - ALL LOCATIONS

- 2813.1 The provisions of this section establish the design requirements for all buildings and structures located in the HE District.
- 2813.2 Except as provided in § 2814.2, the front of a building or structure shall extend to the property line(s) abutting the street right-of-way for not less than ninety (90) percent of the property line and to a height of not less than twenty-five (25) feet.
- 2813.3 Whatever portion of the front of a building or structure that does not extend to the property line(s) pursuant to § 2813.2 must extend to within 25 feet of the front property line and to a height of not less than twenty-five (25) feet.
- 2813.4 Awnings, canopies, bay windows, and balconies may extend forward of the required building line to the extent permitted by any other regulations.
- 2813.5 For every fifty (50) feet of uninterrupted building façade length, the building shall incorporate modulated and articulated building wall planes through the use of projections, recesses and reveals expressing structural bays, changes in color graphical patterns, texture, or changes in building material of the façade.
- 2813.6 The articulation shall have a minimum change of plane of six (6) inches.
- 2813.7 Façade articulation of less than two (2) feet in depth shall qualify to meet the street frontage required building line standards of §§ 2813.2 and 2813.3.

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- 2813.8 Any single articulation feature shall not exceed sixty (60) percent of the building façade width.
- 2813.9 Buildings with ground floor retail shall incorporate vertical elements to create a series of storefront-type bays with entrances that are no more than 50 feet apart.
- 2813.10 Security grilles shall have no less than seventy (70) percent transparency.
- 2813.11 Street-facing facades shall not have blank walls (without doors or windows) greater than 10 feet in length.
- 2813.12 Each use within a building shall have an individual public entrance that is clearly defined and directly accessible from the public sidewalk.
- 2813.13 Exterior display of goods and exterior storage between the building line and the front lot line is prohibited. Outdoor seating for restaurants and pedestrian-oriented accessory uses, such as flower, food, or drink stands, or other appropriate vendors are permitted to the extent consistent with other District laws.
- 2813.14 Windows shall cover the following minimum area of street-facing facades above the ground floor level.

Location	Minimum Percentage	
	Non-Residential	Residential
Primary Street	35%	20%
Secondary Street	40%	20%

- 2813.15 Buildings and structures should clearly articulate a base, middle, and top, except for row dwellings and flats.
- 2813.16 High quality, durable materials which enhance the building and convey permanence shall be required.
- 2813.17 The use of synthetic stucco, vinyl siding, and/or other low-grade exterior finishes is prohibited.

2814 DESIGN REQUIREMENTS FOR BUILDINGS LOCATED ON PRIMARY STREETS

- 2814.1 The provisions of this section set forth standards for buildings and structures with frontage(s) on a primary street.

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- 2814.2 Notwithstanding §§ 2813.2 and 2813.3, the fronts of buildings located at street intersections shall be constructed to the property lines abutting each intersecting street, without any setback, for a minimum of fifty (50) feet from the intersection, along each street frontage.
- 2814.3 The corner of the building at the intersection of two primary streets or a primary and secondary street shall incorporate articulation such, as but not limited to, being angled, curved, or chamfered to emphasize the corner.
- 2814.4 The distance from the corner shall not exceed 20 feet, measured from the corner of the lot to the end of the angled or curved wall segment.
- 2814.5 Entrances into a building shall be no more than fifty (50) feet apart and recessed no more than six (6) feet deep or ten (10) feet wide.
- 2814.6 Buildings shall incorporate vertical elements in the street-facing façade to create a series of storefront-type bays where preferred uses are present.
- 2814.7 Residential buildings shall have at least one primary entrance directly accessible from the public sidewalk.
- 2814.8 Instead of the windows required by § 2812.1(d), on primary streets, artwork and displays relating to activities occurring within the building shall be permitted as a special exception if approved by the Zoning Commission pursuant to § 3104, provided the applicant demonstrates that:
- (a) The building has more than 50 percent of its ground level space in storage, parking, or loading areas, or in uses which by their nature are not conducive to windows (such as theaters); and
 - (b) The artwork or displays are consistent with the objective of providing a pleasant, rich, and diverse pedestrian experience.

2815 PARKING, LOADING, AND VEHICLE ACCESS

- 2815.1 Parking for residential uses shall be provided as prescribed in Chapter 21 for the R-5-B Residence zone district.
- 2815.2 Parking for non-residential uses shall be as prescribed in Chapter 21 for the CR Mixed-Use zone district.
- 2815.3 Loading for residential uses shall be as prescribed in Chapter 22 for the R-5-B Residence zone district.

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- 2815.4 Loading for non-residential uses shall be as prescribed in Chapter 22 for the CR Mixed-Use zone district.
- 2815.5 Loading berths shall not front onto a primary or secondary street.
- 2815.6 No driveway or garage entrance providing access to parking or loading areas shall be permitted from a primary or secondary street.
- 2815.7 Driveways or garage entrances shall not be located closer than forty feet (40 ft.) from the intersection of an alley and secondary street as measured from the intersection of the curb lines extended.
- 2815.8 A garage shall be set back at least twelve feet (12 ft.) from the center line of an alley.
- 2815.9 Exceptions from the prohibitions and limitations of this Section (except those that pertain to use) shall be permitted if approved by the Zoning Commission pursuant to § 3104, provided the applicant demonstrates that:
- (a) There is no practical alternative means of serving the parking, loading, or drop-off needs of the building to be served by the proposed driveway or garage entrance;
 - (b) The driveway or garage entrance will not impede the flow of pedestrian traffic; and
 - (c) The driveway or garage entrance is not inconsistent with the DDOT landscape plans for the public rights of way in the Hill East Waterfront area, to the extent that such plans exist at the time of the special exception application.
2. Chapter 30, ZONING COMMISSION PROCEDURES, is amended as follows (new language shown in bold and underlined text, deleted text is shown in strikethrough)
- (a) Subparagraph 3010.2 (d) is amended to read as follows:
 - (d) Applications for Zoning Commission review and approval pursuant to Chapters 16, ~~and 18,~~ **and 28** of this Title as well as § 1709.21.¹

¹ The double-underlined text is being concurrently proposed in Z.C. Case No. 06-32 (Text Amendment – 11 DCMR) (Text amendments to include Square 766 in the Capital South TDR receiving zone).

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- (b) The first sentence of §3011.1 is amended to read as follows:

3011.1 As soon as an application or petition is accepted for filing by the Director of the Office of Zoning, the Director shall place a copy of the application or petition in the public record of the Commission and refer a copy to the D.C. Office of Planning for review and recommendation on whether the matter should be processed further, except that the applications for Zoning Commission review and approval filed pursuant to Chapters 16, ~~and 18,~~ **and 28** of this Title, which are deemed complete by the Director, shall be immediately scheduled for hearing consistent with the notice provisions of this chapter. ...

- (c) Subsection 3012.1 is amended to read as follows:

3012.1 **As to those applications or petitions for which set down is required,** as soon as an application or petition is set down for a public hearing, the matter shall be referred to the D.C. Office of Planning and any other public agencies that may be requested to provide information and assistance, depending on the nature of the case. **As to those applications for which set down is not required pursuant to § 3011.1,** as soon as an application requesting Zoning Commission review and approval pursuant to Chapters 16, ~~and 18,~~ **and 28** of this Title is accepted for filing by the Director of the Office of Zoning, a copy of the application shall be referred to the D.C. Office of Planning and other appropriate agencies for review and comment. A copy shall also be sent for review and comment to:

- (a) The National Capital Planning Commission of all Chapter 18 applications and those applications for approval pursuant to 11 DCMR §§ 1610.1 (a) and (d); ~~and~~
- (b) The Capitol Police Board for those applications for approval pursuant to 11 DCMR § 1612.18; **and**
- (c) **The District Department of Transportation for those applications for special exception approval pursuant to § 2803.**

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(d) Subsection 3015.4 is amended to read as follows:

3015.4 When a Zoning Map amendment, planned unit development, air space development, or Zoning Commission review and approval pursuant to Chapters 16, ~~and 18,~~ **and 28** of this Title is requested by a property owner for the property owned, the applicant shall give additional notice of the public hearing by posting the property with notice of hearing at least forty (40) days in advance of the hearing.

(e) Subsection 3022.1 is amended to read as follows:

3022.1 The procedures set forth in D.C. Official Code § 2-509 (2001), and this section shall apply to applications for a change in the Zoning Map pursuant to § 102 and to applications for planned unit developments, air space developments, and similar plan review activities of the Commission, including those required by Chapters 16, and 18, **and 28** of this Title as well as § 1709.21.² except as otherwise provided in § 3010.7.

(f) Subsection 3027.4 is amended to read as follows:

3027.4 The Commission need not take proposed action with respect to an application for Zoning Commission review and approval pursuant to Chapters 16, and 18, **and 28** of this Title as well as § 1709.21.³, but may take final action in accordance with § 3028, either at the close of the hearing or at a subsequent public meeting.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary of the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 210-S, Washington, D.C. 20001.

Copies of this proposed rulemaking may be obtained at cost by writing to the above address.

² See FN 1.

³ See FN 1.