

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS****NOTICE OF FINAL RULEMAKING**

The Director of the Department of Consumer and Regulatory Affairs, pursuant to the authority set forth in D.C. Official Code §§ 47-2832.01, 47-2851.12, and 47-2851.20, hereby gives notice of the adoption of a new Chapter 6 (Parking Facilities and Valet Parking) of Title 24 of the District of Columbia Municipal Regulations. This rulemaking amends the parking facilities and parking facilities attendant rules to establish requirements for valet parking companies. In addition, it amends the name of the chapter.

Proposed regulations were published in a Notice of Proposed Rulemaking on October 10, 2008, in the *D.C. Register* at 55 DCR 10338. In response to comments received, the regulations were revised to: (1) change references from “parking lot” to “parking facility”; (2) require proof of sufficient insurance, rather than a bond; (3) modify application requirements for a parking facility license; (4) revise construction and fire safety requirements; (5) eliminate license requirement for valet parking attendants; and (6) clarify business practice requirements.

A second Notice of Proposed Rulemaking was published on July 31, 2009, in the *D.C. Register* at 56 DCR 6053. One comment was received, but no changes have been made.

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

**24 DCMR Chapter 6 is amended to read as follows:****CHAPTER 6 PARKING FACILITIES AND VALET PARKING**

Secs.

- 600 Administration and Enforcement
- 601 Insurance
- 602 Parking Facility License
- 603 Application for Parking Facility License
- 604 Transfer and Modification of Licenses
- 605 Construction, Fire Safety, Fencing, Driveways, and Paving
- 606 Inspection of Premises
- 607 Parking of Vehicles
- 608 Operating Requirements
- 609 Parking Facility Signs and Notice of Parking Fees
- 610 Parking Facility Attendants
- 611 Application for Parking Facility Attendant’s License
- 612 Non-Driving Parking Facility Attendants
- 613 Valet Parking License
- 614 Application for Valet Parking License
- 615 Transfer and Modification of Licenses
- 616 Valet Parking of Vehicles
- 617 Valet Parking Signs and Notice of Valet Parking Fees

- 618 Penalties
- 619 Notice of Proposed Action and Appeal Rights
- 620 Hearings and Appeals

## **600. ADMINISTRATION AND ENFORCEMENT**

- 600.1 No person, firm, corporation, co-partnership, association, trustee, or administrator shall engage in any of the businesses designated in this chapter without first having obtained the appropriate license or licenses under this chapter.
- 600.2 All licenses shall be issued by the Director of the Department of Consumer and Regulatory Affairs (Director) or the Director's designee.
- 600.3 Any license issued under this chapter may be suspended or revoked by the Director for failure of the licensee to comply with the laws or regulations applicable to the licensed business under this chapter.
- 600.4 Any violation of any of the provisions of this chapter shall subject the offender to the penalties prescribed in D.C. Official Code § 47-2846 (2001) and Title 16, Chapter 32 of the District of Columbia Municipal Regulations.
- 600.5 Any person who makes any false or misleading statement in the filing of any information required under this chapter shall be subject to the penalties prescribed in D.C. Code § 47-2846 (2001) and may have his or her license suspended or revoked by the Director.

## **601. INSURANCE**

- 601.1 Prior to issuance of a license, an applicant for a parking facility license or a valet parking license shall furnish to the Director a certificate of insurance, issued by an insurer authorized to do business in the District, evidencing umbrella coverage of a minimum of two million dollars (\$2,000,000).
- 601.2 Each licensee shall give, in writing, advance notice to the Director prior to the cancellation or lapse of the policy. The licensee shall maintain the insurance required under this chapter in full force and effect for the duration of the license period.
- 601.3 Violation of this section shall be grounds for the Director to suspend or revoke the license.

## **602. PARKING FACILITY LICENSE**

- 602.1 Owners or managers of any premises, or parts of any premises, where vehicles of any description are stored or kept for other people, for profit or gain, shall obtain a license and pay a license fee, except as provided in § 602.2; such businesses shall also obtain all other business licensure as required by law or regulation. Any parking facility licensee that operates valet parking services, as defined in § 613.1, shall also obtain a valet parking license, as provided in § 613.

- 602.2 In cases where a person or business operates parking facilities in multiple locations, each parking facility location shall require a separate license.
- 602.3 Where the area of a parking facility is five hundred square feet (500 ft.<sup>2</sup>) or less, the provisions of this chapter shall not apply.
- 602.4 Where the area of a parking facility is more than five hundred square feet (500 ft.<sup>2</sup>), the owner or manager of the parking lot shall obtain a license and pay a license fee.
- 602.5 Each license shall be valid for two (2) years and shall expire at the end of the license period.
- 602.6 Where more than one (1) of the designations of parking facilities is conducted or operated by any one (1) person, the license fee shall be paid for each type of business designation.
- 602.7 Each licensee shall comply with all applicable traffic laws and parking regulations when providing parking facility services.

### **603. APPLICATION FOR PARKING FACILITY LICENSE**

- 603.1 No license for a parking facility issued under the provisions of this chapter shall be issued until application is made to the Department of Consumer and Regulatory Affairs (Department), upon a form furnished by the Director.
- 603.2 Each application shall be signed by the owner or manager of each business and shall correctly set forth the information required on the application form.
- 603.3 Each applicant shall correctly state the following:
- (a) The ownership and location of the premises, or the parts of the premises, to be used for the storage and keeping of vehicles;
  - (b) The area in square feet (ft.<sup>2</sup>) to be used in the business;
  - (c) For surface parking lots, a description of any curbing or fencing to be maintained as required under § 605 of this chapter; and
  - (d) Any other information deemed necessary and appearing on the application form that is provided.
- 603.4 Each application shall be accompanied by a Certificate of Occupancy issued for the property to be used by the applicant. Applicants for surface parking lots shall additionally provide a plat showing the size and area of the land, as prepared by the District Surveyor.
- 603.5 Where fences, copings, driveways, or other uses of public space are required, they must meet the requirements of and be permitted by the District Department of Transportation.
- 603.6 An applicant who is not a resident of the District of Columbia shall, as a condition to the issuance of a license, employ as his or her agent a person who is a resident of the District or who has a place of business in the District, and upon whom may be served all notices and court processes in connection with or arising out of the licensee's business operation.

The designated agent shall certify on the application that he or she has agreed to act as an agent for the licensee.

603.7 The appointment or employment of an agent shall be maintained during the period of time for which a license is issued; whenever any change is made in the appointment or employment of the agent required by this section, the licensee shall deliver to the Director a written notice of the change not less than five (5) days after the change.

603.8 The Director, upon finding that an agent designated by a licensee in accordance with the requirements of this section is not, after reasonable search, to be found in the District for the purpose of serving the licensee any notice or process required to be served, may institute a proceeding for the suspension or revocation of the license issued to the licensee; and notice of the suspension or revocation shall be effective if mailed to the last known address of the licensee appearing in the Department's records.

#### **604. TRANSFER AND MODIFICATION OF LICENSES**

604.1 Upon any change in the ownership, management, or mailing address of the licensed business, the parking facility licensee shall immediately notify the Director of that fact.

604.2 The new owner, resident general agent, or attorney, as the case may be, shall be responsible for the conduct of the business after a change in ownership or management and shall, in a timely manner, file a new application with the Director.

#### **605. CONSTRUCTION, FIRE SAFETY, FENCING, DRIVEWAYS, AND PAVING**

605.1 Parking facilities shall at all times comply with the fire prevention laws and regulations of the District of Columbia.

605.2 No frame structure shall be erected, constructed, or maintained upon any surface parking lot or ground that is more than forty square feet (40 ft.<sup>2</sup>) in area. Any such structures shall comply with District Construction Codes requirements.

605.3 No license shall be issued for any surface parking lot or ground abutting public space, not including public alleys, unless the division line between the public space and the surface parking lot or ground is marked by the coping or fence required under this section.

605.4 The coping or fence required under this section for surface parking lots shall be built entirely on private property and the licensee shall apply for the necessary permitting.

605.5 Coping shall consist of a regulation eight inch (8 in.) coping made of concrete.

605.6 Fencing shall be of an approved design, not less than two feet six inches (2 ft. 6 in.) in height; and may be made of cable, bar, wire, or chain construction with concrete, iron, pipe, or wood posts.

605.7 Failure to erect or maintain the coping or fence for surface parking lots required under this section shall be a violation of this chapter.

- 605.8 All curb cuts and driveways shall meet the specifications of and be permitted by the District Department of Transportation.
- 605.9 Businesses abutting on one (1) street shall be limited to two (2) driveways, and businesses abutting on two (2) or more streets shall be limited to three (3) driveways.
- 605.10 Lots and grounds paved with impervious material shall be graded and provided with approved drains so that no drainage will flow across the sidewalk.
- 605.11 No paving on public space shall be done without first obtaining permit from the District Department of Transportation.

#### **606. INSPECTION OF PREMISES**

- 606.1 Licensed premises shall be open during business hours to inspection by authorized agents of the District government.
- 606.2 No person shall obstruct or interfere with any District agent when the agent is on official inspection business.

#### **607. PARKING OF VEHICLES**

- 607.1 At the time of the acceptance of the motor vehicle for parking in or upon a licensed premise, the licensee shall supply a claim check or receipt to the person leaving the vehicle for storage.
- 607.2 Each claim check or receipt shall be distinctly numbered to correspond with a coupon that shall be placed upon the motor vehicle during the time the vehicle is stored.
- 607.3 Each claim check shall show on its face the following:
- (a) The personal or business name of the licensee; and
  - (b) The street address of the premise where the vehicle is stored; or
  - (c) A claim number the licensee can rely upon to determine the location where the vehicle is stored.
- 607.4 On premises not having motor vehicle servicing facilities, or that use overflow premises for storage, a notice or sign shall be placed in a conspicuous location notifying the public of the fact that vehicles are stored off-premises.
- 607.5 No vehicle shall be parked or caused to be parked so that it or any part of it is on or projects over public space, except as provided in Chapter 2 of this Title.

#### **608. OPERATING REQUIREMENTS**

- 608.1 Each parking facility licensed under this chapter shall be kept free from broken glass and other objects that could cut or damage the tires on vehicles parked at the facility.
- 608.2 At all times, licensees shall keep sidewalks, parkings, or any public space immediately abutting the licensed premises, free and clear of dirt, gravel, mud, stones, grease, and oil.

- 608.3 No person soliciting another to park an automobile shall solicit in such manner as to create a traffic hazard, or obstruct or interfere with the free passage of pedestrians or vehicles.
- 608.4 Any parking facility that operates a manlift or any similar device, or allows any employee to utilize such a device on the premises of the parking facility, shall ensure that:
- (a) The device is properly licensed;
  - (b) The parking facilities' employees are properly trained in the use of the device; and
  - (c) Operation of the device is in compliance with applicable District laws and regulations.

### **609. PARKING FACILITY SIGNS AND NOTICE OF PARKING FEES**

- 609.1 In all areas other than those zoned only for residential use, each licensee shall place and maintain a legible and conspicuous sign that is clearly visible at every entrance to the licensed premises. Each sign shall state the name of the licensee and the hours of the day and night during which the premises are open and attended for the storage of vehicles; and it shall comply with all applicable regulations in force in the District of Columbia.
- 609.2 Each sign shall also state, in a clearly visible manner, the hourly and daily rates charged for the storage of vehicles on the paid premises.
- 609.3 No licensee shall charge, or permit to be charged, any greater fee than is posted at the time of entry. Rates applicable to weekly or monthly contracts, however, need not be posted.
- 609.4 The provisions of this section shall also apply to parking facilities located in residential zones, except that each sign shall conform to the sign regulations applicable to residential zones.

### **610. PARKING FACILITY ATTENDANTS**

- 610.1 Except as permitted in § 610.2, any person employed to park or supervise the parking of automobiles in a parking facility, or who parks or supervises the parking of automobiles in a parking facility, must possess a parking facility attendant's license and pay a license fee.
- 610.2 The owner or operator of a parking facility, or the owner's duly authorized agent, may employ an individual who does not hold a parking facility attendant's license, but who does hold a valid motor vehicle operator's license, to park or supervise the parking of automobiles for not more than seventy-two (72) hours before the submission by the attendant of an application to the Director, and upon the issuance by the Director of a receipt prescribed in this section.
- 610.3 Each license shall be valid for two (2) years.
- 610.4 The licensee shall carry the license issued under this section on his or her person at all times while engaged in the licensed occupation.

- 610.5 The licensee shall exhibit his or her license on demand to any customer of the parking lot, or to any authorized representative of the District government.
- 610.6 The license issued to any individual may be revoked at any time in accordance with the terms of D.C. Official Code § 47-2844 (2001).
- 610.7 No person shall be issued a parking facility attendant's license unless he or she possesses a valid motor vehicle operator's license.
- 610.8 No person shall operate a motor vehicle under the authority of a parking facility attendant's license unless the person also has been issued, and has in his or her possession at the time of operating the motor vehicle, a valid motor vehicle operator's license.
- 610.9 While providing parking facility services, each licensee shall wear a uniform that identifies the licensee as working for a parking lot company.

**611. APPLICATION FOR PARKING FACILITY ATTENDANT'S LICENSE**

- 611.1 Any individual desiring a parking facility attendant's license shall correctly provide, upon a form prescribed by the Director, the following information:
- (a) The applicant's full name and address;
  - (b) The applicant's color of hair and eyes;
  - (c) The applicant's date of birth and sex;
  - (d) The number and date of expiration of the applicant's motor vehicle operator's license; and
  - (e) A statement of whether the applicant has ever been convicted of a felony or misdemeanor.
- 611.2 Each applicant shall include with his or her application a copy of the applicant's police record from the jurisdiction in which he or she resides on the date of the application, which is certified by the chief of police of that jurisdiction.
- 611.3 On receipt of the application, the Director shall issue to the applicant a receipt, certifying that the application has been received.
- 611.4 Upon the approval of the application by the Director, the Director shall issue to the applicant a license for two (2) years.
- 611.5 When an applicant for a parking attendant's license has submitted his or her application and has been issued the receipt by the Director, as provided for in this section, that receipt shall have the full force and effect of a license until the Director either issues the license or denies the application. The Director may require additional information or documentation necessary to determine the applicant's fitness to receive a license and may deny a license to an applicant who fails to provide the required information or supporting documentation.
- 611.6 In addition to those grounds otherwise outlined by law or regulation, the Director shall have the authority to deny, revoke, or suspend the license if the applicant or licensee:

- (a) Fails to meet or maintain the qualifications for licensure as outlined in this chapter; or
- (b) If the Director finds that the applicant or licensee shows a disregard for safety, property, welfare of an individual, or the general public, or is otherwise unfit to work as a parking lot facility attendant.

## **612. NON-DRIVING PARKING FACILITY ATTENDANTS**

612.1 Notwithstanding the requirements of § 610.9 of this section, the Director may waive the requirement that the applicant possess a valid motor vehicle operator's license when an application is accompanied by the following:

- (a) An affidavit from the owner or operator of the parking facility at which the applicant is to be employed stating that the applicant will, under no circumstances, be required or allowed to operate a motor vehicle while he or she is employed as a parking attendant in that establishment; and
- (b) An affidavit from the applicant stating that the applicant will not operate any motor vehicle while he or she is employed as a parking attendant.

612.2 Any parking facility attendant subject to § 612.1 shall have clearly indicated on his or her license information identifying the attendant as a person not authorized to operate a motor vehicle in the course of his or her employment.

612.3 The operation of a motor vehicle in the course of employment by a parking facility attendant subject to § 612.1 shall constitute a violation of this chapter. Conviction of this violation shall constitute grounds for the revocation of the license issued to the attendant.

612.4 A parking facility attendant subject to § 612.1 shall submit a new application for a parking facility attendant's license if the terms of employment of the parking facility attendant require him or her to operate a motor vehicle.

## **613. VALET PARKING LICENSE**

613.1 Owners or managers of businesses that take a vehicle in public space and park it, for profit or gain, shall obtain a license and pay a license fee (such fee is separate from any fees required by the District Department of Transportation pursuant to Chapter 16 of Title 24 of the District of Columbia Municipal Regulations). Any valet parking licensee that operates a parking facility, as defined in § 602.1, shall also obtain a parking facility license, as provided in § 602; provided, that a parking facility licensee shall not be required to obtain a valet parking license for services provided by the parking facility licensee's parking attendants.

613.2 Each license shall be valid for two (2) years, shall be good only for the specific designation on the license, and shall expire at the end of the license period.

613.3 Each licensee shall comply with all applicable traffic laws and parking regulations when providing valet parking services.

**614. APPLICATION FOR VALET PARKING LICENSE**

- 614.1 No license for valet parking issued under the provisions of this chapter shall be issued until application is made to the Department of Consumer and Regulatory Affairs, upon a form furnished by the Director.
- 614.2 Each application shall be signed by the owner or manager of each business and shall correctly set forth the information required on the application form.
- 614.3 No license shall be issued unless the applicant certifies that he or she has reviewed applicable District zoning laws and regulations and the applicant's business is not required to obtain a Certificate of Occupancy.
- 614.4 An applicant who is not a resident of the District of Columbia shall, as a condition to the issuance of a license, employ as his or her agent a person who is a resident of the District or who has a place of business in the District, and upon whom may be served all notices and court processes in connection with or arising out of the licensee's business operation. The designated agent shall certify on the application that he or she has agreed to act as an agent for the licensee.
- 614.5 The appointment or employment of an agent shall be maintained during the period of time for which a license is issued; whenever any change is made in the appointment or employment of the agent required by this section, the licensee shall deliver to the Director a written notice of the change not less than five (5) days after the change.
- 614.6 The Director, upon finding that an agent designated by a licensee in accordance with the requirements of this section is not, after reasonable search, to be found in the District for the purpose of serving the licensee any notice or process required to be served, may institute a proceeding for the suspension or revocation of the license issued to the licensee; and notice of the suspension or revocation shall be effective if mailed to the last known address of the licensee appearing in the Department's records.

**615. TRANSFER AND MODIFICATION OF LICENSES**

- 615.1 Upon any change in the ownership, management, or mailing address of a licensed valet parking business, the licensee shall immediately notify the Director of that fact.
- 615.2 The new owner, resident general agent, or attorney, as the case may be, shall be responsible for the conduct of the business after a change in ownership or management and shall, in a timely manner, file a new application with the Director.

**616. VALET PARKING OF VEHICLES**

- 616.1 At the time of the acceptance of the motor vehicle for valet parking, the licensee shall supply a claim check or receipt to the person leaving the vehicle for valet parking.

- 616.2 Each claim check or receipt shall be distinctly numbered to correspond with a coupon that shall be placed upon the motor vehicle's dashboard during the time the vehicle is valet parked.
- 616.3 Each claim check or receipt shall show, on its face, the personal or business name of the licensee.
- 616.4 For each vehicle that has been valet parked by the licensee, the licensee shall store the keys of that vehicle in a secure manner and location.
- 616.5 No motor vehicle shall be parked or caused to be parked so that it is parked in a public space not zoned for the parking of motor vehicles, or in a manner proscribed by the District Department of Transportation in Title 24, Chapter 16 of the District of Columbia Municipal Regulations.

**617. VALET PARKING SIGNS AND NOTICE OF VALET PARKING FEES**

- 617.1 Each licensee shall place and maintain a legible and conspicuous sign that complies with the requirements of the District Department of Transportation, as provided for in Title 24, Chapter 16 of the District of Columbia Municipal Regulations.
- 617.2 Each sign shall state the fees charged for the valet parking of motor vehicles.
- 617.3 No licensee shall charge, or permit to be charged, any greater fee than is posted.

**618. PENALTIES**

- 618.1 Each licensee shall be liable for all penalties provided for violation of any of the provisions of this chapter, whether the violations are committed by the licensee or the licensee's agent or employee.
- 618.2 Pursuant to D.C. Official Code § 47-2846, any person violating any provision of this chapter shall, upon conviction, be fined not more than three hundred dollars (\$300) or imprisoned for not more than thirty (30) days, or both.
- 618.3 Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of this regulation pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985. Adjudication of any infraction of this regulation shall be pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985.

**619. NOTICE OF PROPOSED ACTION AND APPEAL RIGHTS**

- 619.1 If the Department proposes to deny, suspend or revoke a license, a written notice shall be provided to the applicant or licensee, which states the proposed action and the basis for the proposed action.

- 619.2 The notice required under § 619.1 shall advise the applicant or licensee of the right to request a hearing within ten (10) business days (excluding Saturdays, Sundays, and legal holidays) from the date of the service of the notice.
- 619.3 The notice shall advise that the action proposed or recommended will be taken at the expiration of ten (10) calendar days after service of the notice unless an appeal is taken.
- 619.4 The notice shall be:
- (a) Served personally upon the applicant or licensee, or the applicant or licensee's agent; or
  - (b) Sent by first class mail to the home or business address of the applicant or licensee, or the applicant or licensee's agent, appearing on the application or license.
- 619.5 A notice that is returned by the post office for reason of refusal of the addressee to accept delivery, or incorrect address, is deemed to have been properly served on the addressee by mail.
- 619.6 An applicant may not file a separate application during the appeal process.

## **620. HEARINGS AND APPEAL**

- 620.1 Any licensee on whom a notice has been served pursuant to § 619 may file a written notice of appeal with the Office of Administrative Hearings (OAH).
- 620.2 All hearings and appeals shall be conducted pursuant to the regulations promulgated by OAH. Any stay of an OAH decision that results in the revocation of a license shall be issued pursuant to the procedures set forth by OAH.

## DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302 (14) of the District of Columbia Health Occupations Revision Act of 1985 (“Act”), effective March 15, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), and Mayor’s Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of the following amendments to Title 17 (Business, Occupations & Professions) (May 1990) of the District of Columbia Municipal Regulations.

This rulemaking establishes licensure regulations for the profession of speech language pathology, and will implement the Audiology and Speech-Language Pathology Amendment Act of 2006, which was effective March 4, 2007 (D.C. Law 16-0219; D.C. Official Code § 3-1201.02(2B)(A)). This Act requires licensure of audiologists and speech-language pathologists by the Board of Audiology and Speech-Language Pathology.

This rulemaking was published as proposed on July 10, 2009, in the D.C. Register, Volume 56, number 28, page 005600. No comments were received.

**Title 17 (Business, Occupations & Professions) (May 1990) is amended as follows:****I. The table of contents is amended as follows:****A. A new Chapter heading for Chapter 79 is added to read as follows:****CHAPTER 79 SPEECH-LANGUAGE PATHOLOGY****B. Section headings for Chapter 79 are added to read as follows:**

7900	GENERAL PROVISIONS
7901	TERM OF LICENSE
7902	EDUCATIONAL REQUIREMENTS
7903	CLINICAL FELLOWSHIP REQUIREMENTS
7904	APPLICANTS EDUCATED IN FOREIGN COUNTRIES
7905	NATIONAL EXAMINATION
7906	CONTINUING EDUCATION REQUIREMENTS

7907	APPROVED CONTINUING EDUCATION PROGRAMS AND ACTIVITIES
7908	[RESERVED]
7909	CONTINUING EDUCATION CREDITS
7910	LICENSURE BY ENDORSEMENT
7911	WAIVER OF CLINICAL FELLOWSHIP REQUIREMENTS
7912	PRACTICE OF SPEECH-LANGUAGE PATHOLOGY BY GRADUATE STUDENTS
7913	STANDARDS OF CONDUCT
7999	DEFINITIONS

**II. A new Chapter 79 is added to read as follows:**

**CHAPTER 79 SPEECH-LANGUAGE PATHOLOGY**

**7900 GENERAL PROVISIONS**

- 7900.1 This chapter shall apply to applicants for and holders of a license to practice speech-language pathology.
- 7900.2 Chapter 40 (Health Occupations: General Rules) and 41 (Health Occupations: Administrative Procedures) of this title shall supplement this chapter.

**7901 TERM OF LICENSE**

- 7901.1 Subject to § 7901.2, a license issued pursuant to this chapter shall expire at 12:00 midnight of December 31<sup>st</sup> of each even-numbered year.
- 7901.2 If the Director changes the renewal system pursuant to § 4006.3 of chapter 40 of this title, a license issued pursuant to this chapter shall expire at 12:00 midnight on the last day of the month of the birth of the holder of the license, or other date established by the Director.

**7902 EDUCATIONAL REQUIREMENTS**

- 7902.1 Except as otherwise provided in this chapter, an applicant for a license

shall furnish proof satisfactory to the Board, in accordance with § 841 of the Act, D.C. Official Code § 3-1208.41, of the following:

(a) That the applicant has graduated with a Master's degree or a Doctoral Degree in speech-language pathology from a recognized educational institution whose speech language pathology program is accredited by the Council on Academic Accreditation in Audiology and Speech Language Pathology, an accrediting body recognized by the United States Department of Education, or an equivalent accrediting body as determined by the Board.

(b) That the applicant met the requirements set forth in section 7905 of these regulations; and

(c) That the applicant has completed a period of clinical fellowship as required by these regulations.

### **7903 CLINICAL FELLOWSHIP REQUIREMENTS**

7903.1 A person completing the clinical fellowship requirements shall have a Master's or Doctoral degree and shall commence a clinical fellowship within 2 years from the date of conferral of the degree, and shall complete the clinical fellowship within three and a half (3.5) years from the date of conferral of the degree.

7903.2 The Board may extend the period of clinical fellowship for good cause shown.

7903.3 The Board may accept completion of the clinical fellowship required for the American Speech-Language-Hearing Association Certificate of Clinical Competence as meeting the requirements for clinical fellowship in this chapter.

7903.4 To complete a clinical fellowship the applicant shall be employed, with or without direct compensation, as a professional in the field of speech-language pathology under general supervision for a period of not less than nine (9) months with a minimum of thirty (30) hours of work per week. This requirement may also be met with part-time employment as follows:

(a) Fifteen (15) to nineteen (19) hours a week for a period of eighteen (18) months;

(b) Twenty (20) to twenty four (24) hours a week for a period of fifteen (15) months; or

(c) Twenty five (25) to twenty nine (29) hours a week for a period of twelve months.

7903.5 At least eighty percent (80%) of the supervisee's clinical fellowship shall be in direct client contact which includes the following:

- (a) Assessment, diagnosis, evaluation and treatment;
- (b) Screening;
- (c) Habilitation and rehabilitation; and
- (d) Activities related to case management.

7903.6 The remaining twenty percent (20%) shall be comprised of supervised activities such as writing, research or planning.

7903.7 The activities included in a clinical fellowship shall consist of the following:

- (a) Conducting evaluations and treatment procedures;
- (b) Interpreting test results;
- (c) Determining case selections;
- (d) Designing treatment programs;
- (e) Collecting data and documenting performance;
- (f) Maintaining clinical records;
- (g) Providing written or oral reports (progress notes, diagnostic reports) regarding patients' or clients' status;
- (h) Making referrals; and
- (i) Participating in case conferences.

7903.8 An individual serving as a supervisor for the clinical fellowship requirement:

- (a) Shall hold a valid District of Columbia license in speech language pathology, a license in another jurisdiction with requirements substantially similar to the licensure requirements in the District, or if

in a state that does not require licensure, a Certificate of Clinical Competence from the American Speech-Language Hearing Association in speech-language pathology;

- (b) Shall have been in practice for a minimum of two (2) years after licensure or certification;
- (c) May not supervise more than three (3) individuals at one time;
- (d) May not have been disciplined by a board within the previous five (5) years; and
- (e) Shall provide a minimum of thirty six (36) hours of supervisory activities during the clinical fellowship including a minimum of two (2) hours of monitoring activities each month.

7903.9 An individual serving as a supervisor in the District shall be legally responsible for services provided by the supervisee.

7903.10 An applicant for a license shall demonstrate qualifications required by §§ 7903.3-7903.6 by submitting with the application a signed statement from each supervisor who supervised the applicant during the required fellowship period which sets forth the following:

- (a) The number of hours of the applicant's practice of speech-language pathology;
- (b) The number of hours of general supervision of the applicant;
- (c) The specific nature of responsibilities included in the applicant's practice;
- (d) A rating of the applicant's performance;
- (e) The location at which and period(s) of time during which the supervision took place; and
- (f) The license number and jurisdiction in which the supervisor was licensed during the supervised period, or proof that the supervisor has a Certificate of Clinical Competence if the clinical fellowship is in a state that does not require licensure.

#### **7904 APPLICANTS EDUCATED IN FOREIGN COUNTRIES**

7904.1 The Board may grant a license to practice speech-language pathology to

an applicant who completed an educational program in a college or university in a foreign country which was not accredited in accordance with § 7902 if the applicant meets the following requirements:

- (a) Meets all requirements of this chapter except for § 7902.1; and
- (b) Demonstrates to the satisfaction of the Board that the applicant's education and training are substantially equivalent to the requirements of this chapter and the Act that the applicant is qualified to practice speech-language pathology by submitting documentation required by § 7904.2 of this section.

7904.2 An applicant under this section shall, in lieu of meeting the requirements of § 7902.1, submit one of the following:

- (a) Proof satisfactory to the Board that the applicant has received a Master's degree or higher from a foreign institution which was accredited, at the time the degree was conferred, by an accrediting body recognized by the national government of the country in which the institution is located; or
- (b) A certification from a private education evaluation service approved by the Board that the applicant's foreign education is substantially equivalent to the education provided in an accredited program.

7904.3 The Board may interview an applicant under this section to determine whether the applicant's education or training meets the requirements of the Act and this chapter.

7904.4 If a document required by this chapter is in a language other than English, an applicant shall arrange for its translation into English by a translation service acceptable to the Board and shall submit a translation signed by the translator attesting to its accuracy.

## **7905 NATIONAL EXAMINATION**

7905.1 To qualify for a license by examination, an applicant shall submit proof of having obtained a score of 600 on the National Examination in Speech-Language Pathology (PRAXIS II: Subject Assessment in Speech-Language Pathology) within the five (5) years before applying for licensure.

7905.2 If an applicant for licensure took the National Examination in Speech-Language Pathology more than 5 years ago, the applicant shall submit the following:

- (a) Proof that the applicant has practiced speech-language pathology for a total of three (3) years of the five (5) years before applying for licensure, and
- (b) Proof of American Speech-Language-Hearing Association certification or that the applicant obtained a score of 600 on the National Examination in Speech-Language Pathology.

**7906 CONTINUING EDUCATION REQUIREMENTS [RESERVED]**

**7907 APPROVED CONTINUING EDUCATION PROGRAMS AND ACTIVITIES [RESERVED]**

**7908 [RESERVED]**

**7909 CONTINUING EDUCATION CREDITS**

**7910 LICENSURE BY ENDORSEMENT**

7910.1 The Board may issue a license by endorsement to a speech-language pathologist who has a valid, unrestricted license in good standing from another jurisdiction of the United States with standards which are, as determined by the Board, substantially equivalent to the District of Columbia laws and regulations.

7910.2 To apply for licensure by endorsement, an applicant shall:

- (a) Submit a completed application to the Board on the required forms and include:
  - (i) The applicant's social security number, or, if the applicant does not have a social security number, a sworn affidavit, under penalty of perjury, that the applicant does not have a social security number; and
  - (ii) Two (2) recent passport-type photos.
- (b) Submit a copy of his or her current license with the application.
- (c) Obtain licensure verification from the original state or territory of licensure that the license is current and in good standing. The licensure verification form must be sent directly to the Board by the verifying jurisdiction;
- (d) Meet any other requirements set by the Board; and

(e) Pay all required fees.

**7911 WAIVER OF CLINICAL FELLOWSHIP REQUIREMENTS**

7911.1 The Board may waive the clinical fellowship requirements for applicants who:

(1) Provide proof of employment in the practice of speech language pathology for at least ten (10) of the last fifteen (15) years immediately preceding the effective date of these regulations;

(2) Meet all other requirements of these regulations; and

(3) Apply by December 31, 2009.

**7912 PRACTICE OF SPEECH-LANGUAGE PATHOLOGY BY GRADUATE STUDENTS**

7912.1 A graduate student whose practice fulfills education requirements under §841 of the Act, D.C. Official Code § 3-1208.41, may practice speech-language pathology in accordance with this section 7912 only under the direct supervision of a speech-language pathologist licensed in the District of Columbia.

7912.2 A graduate student under supervision shall identify himself or herself as such at all times when practicing speech-language pathology.

7912.3 Both the supervisor and the graduate student shall sign reports with their full name and credentials.

7912.4 A student may sign only with the highest degree earned.

7912.5 The title or designation of “graduate student” shall be placed after the student’s name in the report statement.

7912.6 If electronic records only accept one (1) signature, the supervisor shall sign.

7912.7 A supervisor shall not supervise more than two (2) full-time students per day in off-site placements from a university.

7912.8 A supervisor shall be personally responsible for each patient the student evaluates and treats during the period of supervision and is subject to

disciplinary action for any violation of the Act or this chapter by the student.

7912.9 An individual serving as a supervisor for a graduate student in the District:

- a) Shall hold a valid District of Columbia license in speech language pathology; and
- b) May not have been disciplined by a board within the previous five (5) years.

### 7913 STANDARDS OF CONDUCT

7913.1 A licensee, student or graduate shall adhere to standards set forth in the “Code of Ethics” as published by the American Speech-Language-Hearing Association as it may be republished from time to time.

### 7999 DEFINITIONS

7999.1 As used in this chapter, the following terms shall have the meanings ascribed:

**Applicant** – a person applying for a license to practice speech-language pathology under this chapter.

**Board** – the Board of Audiology and Speech-Language Pathology, established by § 841, D.C. Official Code § 3-1208.41 (2006).

**Direct supervision** – supervision in which the supervisor is immediately available on the premises and within vocal communication either directly or by a communication device.

**General supervision** – supervision in which the supervisor is available to the person supervised, either in person or by a communications device.

**Good cause** – serious illness of the applicant, the death or serious illness of a member of the applicant’s immediate family, or other cause sufficient to the Board.

**Practice of speech-language pathology** – means the application of principles, methods, or procedures related to the development and disorders of human communication, including any condition, whether of organic or non-organic origin, that impedes the normal process of human communication including disorders and related disorders of speech, articulation, fluency, voice, oral, or written language; auditory comprehension and processing; oral, pharyngeal or laryngeal sensorimotor competencies; swallowing; auditory or visual processing; auditory or visual memory or cognition; communication; and assisted augmentative communication treatment and devices. The term “practice of

speech language pathology” also includes the planning, directing, supervising, and conducting of a habilitative and rehabilitative counseling program for individuals or groups of individuals who have, or are suspected of having, disorders of communication, and any service in speech-language pathology including prevention, identification, evaluation, consultation, habilitation or rehabilitation, instruction or research. The practice of speech-language pathology may include pure-tone air conduction hearing screening, screening of tympanometry, and acoustic reflex screening, limited to a pass-or-fail determination for the identification of individuals with other disorders of communication and may also include aural habilitation or rehabilitation, which means the provision of services and procedures for facilitating adequate auditory, speech, and language skills in individuals with hearing impairment. The practice of speech-language pathology does not include the practice of medicine or osteopathic medicine, or the performance of a task in the normal practice of medicine or osteopathic medicine by a person to whom the task is delegated by a licensed physician.

**Clinical fellowship-** the experience required by section 7903 of these regulations.

**Supervisor** – a speech-language pathologist who is qualified pursuant to section 7903.7 and who is providing general supervision to an individual completing the clinical fellowship requirements, or a speech language pathologist who is qualified pursuant to 7912.9 and who is providing direct supervision to a graduate student under 7912.

**Supervisee-** an individual who is completing the clinical fellowship requirements.

7999.2 - The definitions in § 4099 of chapter 40 of this title are incorporated by reference into and are applicable to this chapter.



**700 SCOPE**

700.1 The provisions of this chapter shall apply to all employers, places of public accommodation, educational institutions, and housing and commercial space subject to the D.C. Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*).

**701 COVERAGE**

701.1 The provisions of this chapter shall govern the processing of any matters involving discrimination on the grounds of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intrafamily offense, and place of residence or business.

701.2 Nothing in this chapter shall be construed to supersede any federal or District of Columbia law, or to invalidate any proceedings commenced under the authority of any prior regulations.

**702 JURISDICTION**

702.1 The Office has the statutory authority to receive, investigate, and seek an appropriate remedy for allegations of conduct prohibited by the Act and which has caused harm to a person or persons protected by the Act; provided, that the following requirements are met:

- (a) The complaint is filed with the Office within one year of the occurrence of the unlawful discriminatory practice, or the discovery thereof, except as may be modified in accordance with procedures established pursuant to section 303 of the Act (D.C. Official Code § 2-1403.03);
- (b) The alleged unlawful discriminatory practice occurred within the District of Columbia; and
- (c) The respondent is identified as follows:
  - (1) Maintaining a presence within the District of Columbia, including that of a registered agent;
  - (2) Substantially engaged in doing business within the District of Columbia; or
  - (3) Operating an enterprise which is subject to licensing by the District of Columbia government.

**703 CONTINUING VIOLATION**

703.1 The complainant may allege that his or her claim is a continuing violation if the claim involves a hostile work environment and at least one of the discriminatory acts occurred within the statutory period of one (1) year or three hundred sixty-five (365) days of the date of filing.

#### **704 SUBMISSION OF INFORMATION REGARDING ALLEGED DISCRIMINATION**

704.1 The Office shall accept information concerning alleged violations of the Act, Title VII of the federal Civil Rights Act of 1964, Title VIII of the Federal Civil Rights Act of 1968, and other applicable statutes from any person.

704.2 Where the information discloses that a person is entitled to file a charge with the Office, the matter will be investigated.

704.3 Any person or organization may request the issuance of a Director's order for an inquiry into individual or systematic discrimination prohibited by any of the laws referred to in § 704.1.

#### **705 FILING OF COMPLAINTS**

705.1 Any person or organization may file with the Office a complaint of a violation of the provisions of the Act, including a complaint of general discrimination, unrelated to a specific person or instance. If a complainant lacks capacity, the complaint may be filed on his or her behalf by a person with an interest in the welfare of the complainant.

705.2 The complaint shall be in writing on a form obtained from the Office, and can be filed online through the Office's website (<http://www.ohr.dc.gov>), via fax, or in-person. Although the date of the online filing will constitute the filing date for the complaint, the finalized complaint shall be signed and verified before a notary public or other person duly authorized to administer oaths and take acknowledgements. The Office shall furnish notary public service without charge.

705.3 The Director may initiate a complaint whenever the Director has reason to believe that any person has committed an unlawful discriminatory practice. A complaint initiated by the Director shall be signed by the Director.

705.4 A complaint alleging a discriminatory practice shall contain the following information:

- (a) The full name and address of the complainant(s);
- (b) The full name and address of the respondent(s);
- (c) A statement of the alleged unlawful discriminatory practice(s) and a statement of the particulars;
- (d) The date(s) of the alleged unlawful discriminatory practice, and if the alleged unlawful discriminatory practice is of a continuing nature, the dates between

which the continuing acts of discrimination are alleged to have occurred; and

- (e) A statement describing any other action, civil, criminal, or administrative in nature, instituted in any other forum or agency based on the same unlawful discriminatory practice as is alleged in the complaint.

705.5 Notwithstanding the provisions of § 705.4, a complaint shall be deemed sufficient when the Office receives from the person making the charge a written statement sufficiently precise to identify the parties, and to describe generally the action or practice complained of.

705.6 A notarized complaint shall be filed with the Office, either in person, and through US Postal Service. The Office shall accommodate a disabled person who wishes to file a complaint or who wishes to make a personal appearance at the Office when filing a complaint. Accommodations may include, but shall not be limited to, a personal representative making an appearance on behalf of a disabled complainant, or an Office representative delivering a complaint to a complainant for signature and notarization.

705.7 The Director shall establish and maintain a complaint file containing all documents pertinent to each case. The complaint file shall contain, at a minimum, the following documents as appropriate to the individual case:

- (a) The complaint;
- (b) The reply to data request;
- (c) Amendment(s) to the complaint;
- (d) The respondent's reply to the complaint and any amendments;
- (e) The complainant's statement of withdrawal;
- (f) The investigator's summary or findings of fact and recommendations;
- (g) The extended processing summary and recommendations;
- (h) The Director's Letter of Determination (LOD);
- (i) The conciliation agreement;
- (j) Letter of certification to the Commission; and
- (k) Letter of dismissal.

705.8 If the Office determines that a complainant is filing what are determined to be frivolous complaints, which may include filing an unreasonable number of complaints during a given time, it may resolve the complaint in accordance with OHR Intake Guidelines.

**706 AMENDMENT OF COMPLAINTS**

- 706.1 A complainant may request that the complaint be amended at any time prior to a hearing.
- 706.2 If the complainant requests an amendment prior to the issuance of the LOD, the Director shall remand the matter to the investigator for further investigation.
- 706.3 If the complainant requests an amendment after certification to the Commission, the matter shall be remanded back to the Office for further investigation.
- 706.4 When an amendment is filed, the Office shall serve a copy of the amendment upon the respondent within two (2) calendar days of the amendment. The respondent shall, within five (5) calendar days after service, file an answer to the amendment. If more time is needed for answering an amendment, the Office shall grant an extension for a reasonable period of time upon the respondent's written request. Any request for an extension must be filed within the five (5) calendar days after service of the amendment.
- 706.5 If the investigation is completely or nearly complete, a new docket number may be assigned.

**707 DISMISSAL FOR LACK OF JURISDICTION**

- 707.1 If the Director determines, on the face of a complaint, that the Office lacks jurisdiction, an order dismissing the complaint shall be issued without an investigation being made. The Respondent may file a motion at the Office for dismissal for lack of jurisdiction or may request dismissal for other legally supported issues.

**708 ADMINISTRATIVE DISMISSALS**

- 708.1 A case shall be terminated without prejudice if the complainant submits a written request to withdraw the complaint, or for the following administrative reasons:
- (a) The complainant is absent and has failed to contact the Office or cannot be contacted by the Office. The Office shall attempt to contact the complainant either by telephone, e-mail, or mail addressed to the complainant's address of record. Inability to contact by mail shall consist of mailing at least one (1) regularly mailed letter or e-mail;
  - (b) The complainant fails to proceed and the Office has unsuccessfully attempted to contact the complainant by telephone, e-mail, or mail, and the complainant has failed to contact the Office within thirty (30) days of the date the first letter was mailed;
  - (c) The complainant fails to state a claim for which relief can be granted under the Act;
  - (d) The respondent no longer exists as a result of a court action (bankruptcy or

dissolution); and

- (e) After preliminary investigation, the Director determines that the Office lacks jurisdiction over the respondent.

708.2 An order dismissing a complaint for administrative reasons shall be in writing and served on the parties, stating the reasons for the dismissal.

708.3 A complainant may request that a complaint previously closed for administrative reasons or voluntarily withdrawn be reopened; provided, that the complainant submits a written request within thirty (30) days of receipt of the order dismissing the complaint, stating specifically the reasons why the complaint should be reopened.

708.4 The Director, upon receipt of a request to reopen a complaint, may, within his or her discretion, reopen the case for good reasons or in the interest of justice provided that no determination has previously been made on the merits of the case.

708.5 The decision of the Director to reopen a complaint shall be served on all parties.

## **709 WITHDRAWAL OF COMPLAINTS**

709.1 Complaints filed with the Office under the provisions of the Act may be voluntarily withdrawn at the request of the complainant at any time prior to the completion of the Office's investigation and findings, as specified in section 305 of the Act (D.C. Official Code § 2-1403.05), except that the circumstances accompanying a withdrawal may be fully investigated by the Office.

## **710 MEDIATION**

710.1 The complainant and respondent must attend a mandatory mediation session to be held on a mutually agreed upon date.

710.2 A Mediator shall be appointed by the Director, or his designee, from a list of individuals qualified in alternative dispute resolution.

710.3 Prior to beginning the mediation session, the Mediator shall require both parties and their representatives to sign an agreement that all aspects of the mediation are to be kept confidential.

710.4 No aspect of the mediation shall become a part of the investigative record, and the Mediator shall not be called as a witness in any later proceeding between the parties.

710.5 During the mediation, the parties shall discuss the issues in the complaint in an effort to reach an agreement that satisfies the interest of all concerned parties.

710.6 The parties shall have forty-five (45) days from the date of the initial mediation session within which to mediate a settlement. If an agreement is reached during the mediation process, the terms of the agreement shall control resolution of the complaint.

710.7 The Office may initiate a preliminary investigation before the conclusion of the mediation proceedings. If the parties are finalizing a settlement agreement, the respondent may request an extension of time in which to file an answer.

710.8 If an agreement is not reached, the Office shall proceed with an investigation of the complaint.

## **711 INVESTIGATION**

711.1 The investigation file shall include the respondent's Statement of Position, responses to the Office's Request for Information and Documents, the complainant's Rebuttal, affidavits of the parties and witnesses, and notes of interviews and fact-finding conferences, if appropriate.

711.2 The investigation may be made by field visits, written or verbal inquiry, conference, or any other method or combination of methods suitable in the discretion of the Director or staff personnel assigned responsibility for the investigation, subject to appropriate guidelines.

711.3 As part of the Office's investigation, the Office may require the person claiming to be aggrieved to provide a statement which includes the following:

- (a) A statement of each specific harm that the aggrieved party has allegedly suffered and the date on which each harm occurred;
- (b) For each harm, a statement specifying the act, policy, or practice which is alleged to be unlawful; and
- (c) For each act, policy, or practice alleged to have harmed the aggrieved party, a statement of the facts which led the party to believe that the act, policy, or practice is discriminatory.

711.4 If the investigator concludes that no additional information is necessary or that the investigation is complete, the investigator shall submit his or her findings of fact or investigative report to the Office of General Counsel (OGC) of the Office for legal sufficiency. OGC shall then submit a draft LOD to the Director for review, approval, and issuance.

## **712 REQUESTS**

712.1 Within five (5) calendar days of the service of a complaint on the respondent, the complaint shall be assigned to an investigator who shall, within eight (8) calendar days thereafter, prepare and serve upon the respondent, via certified mail, a data request. The data request shall include a request for an answer to the complaint, generally in the form of a Position Statement.

712.2 The respondent shall have twenty (20) calendar days after receipt of the data request to submit the requested information. However, in all instances, the requested information

shall be submitted five (5) calendar days before the scheduled fact-finding conference.

- 712.3 If the respondent requests additional time to respond to the data request, a reasonable time shall be allowed, as agreed upon by the respondent and the investigator.
- 712.4 If the respondent fails to comply within the agreed upon extended time, the Office may amend the complaint to include violation of section 264(b) of the Act (D.C. Official Code § 2-1402.64(b)), which will invoke the subpoena power, as provided in § 720.
- 712.5 When a request is made to the respondent for additional data not covered in the original data request, the respondent shall be given a reasonable time to submit the additional information, as determined by the investigator in light of the circumstances of the case, but not fewer than four (4) calendar days.
- 712.6 The parties may only request case information at the close of the investigation, pursuant to the Freedom of Information Act of 2000, effective April 27, 2001 (D.C. Law 13-283; D.C. Official Code § 2-531 *et seq.*).
- 712.7 The complainant shall have an opportunity to rebut evidence submitted by or obtained from the respondent, at any time before the issuance of the LOD.

### **713 FACT-FINDING CONFERENCE**

- 713.1 Within fifteen (15) calendar days of the filing of a complaint, the Office shall serve a notice of the complaint and a copy of the complaint on the respondent.
- 713.2 If considered appropriate, the Director or the Director's designee shall schedule a fact-finding conference within twenty (20) calendar days of the date that a complaint is filed.
- 713.3 The Director or the Director's designee shall, at least seven (7) calendar days prior to the fact-finding conference, do the following:
- (a) Inform the parties of the date of the fact-finding conference; and
  - (b) Inform the parties of their responsibility to provide the Director or the Director's designee with names of witnesses who will provide information at the fact-finding conference.
- 713.4 If a witness for a party is unable to attend the fact-finding conference, that party may request the witness to submit a notarized statement. The party shall deliver the statement to the Office no later than two (2) calendar days before the scheduled date of the fact-finding conference.
- 713.5 The purpose of the fact-finding conference shall be to provide for the rapid processing of charges that are narrowly defined and limited to allegations of direct harm to the charging party.
- 713.6 A record of the fact-finding conference shall be made by a recording device. If a settlement negotiation is initiated during the conference, the settlement discussions shall

be confidential and off the record.

- 713.7 For purposes of this section, a “fact-finding conference” is an informal, investigative technique, not an adversary proceeding.
- 713.8 Each allegation of the charge shall be closely examined and fully discussed. Each party shall be allowed ample time to present and defend his or her position.
- 713.9 If counsel for the respondent or the complainant is present, counsel shall be limited to an advisory role and will not be permitted to speak for their clients. For cross-examination purposes, counsel may ask questions through the conference leader.
- 713.10 The fact-finding conference may be waived or suspended when it becomes apparent to the Director or the Director’s designee that the remedy sought by the complainant may be achieved through a negotiated settlement.
- 713.11 A request for rescheduling a fact-finding conference shall be granted at the discretion of the Director or the Director’s designee. A scheduled court appearance of counsel for either party, illness of either party, or other extenuating circumstances are factors that shall be considered in rescheduling a fact-finding conference.

#### **714 FINAL INVESTIGATIVE REPORT**

- 714.1 When an investigation and fact-finding conference have been completed, the investigator shall, within thirty (30) days of the conference, write a final report of all fact-findings to date and recommend a final determination of probable cause or no probable cause. OGC will review the case file and report for legal sufficiency to determine if further investigation is necessary.

#### **715 DIRECTOR’S DETERMINATION**

- 715.1 OGC shall send a draft LOD recommending probable cause or no probable cause to the Director. The Director shall review the LOD, make a substitute determination or approve the determination, and issue a final determination to the parties. The LOD shall state whether there is probable cause or no probable cause to credit the complaint, or whether the complaint should be dismissed.

#### **716 PROBABLE CAUSE DETERMINATION**

- 716.1 A finding of probable cause shall be based upon credible, probative, and substantial evidence which demonstrates a nexus between the harm complained of and the protected characteristic or activity of the complainant.
- 716.2 If the Director determines there is probable cause to credit the complaint, the LOD shall be served on all parties, advising them of the opportunity to conciliate.
- 716.3 If probable cause is found, the respondent shall have fifteen (15) calendar days to file for reconsideration based on misapplication of law, material misstatement of fact, or discovery of evidence not available during the investigation.

**717 CONCILIATION**

- 717.1 After the Director has issued the probable cause LOD, the parties shall be given notice of an opportunity to settle the complaint through conciliation.
- 717.2 If a conciliation conference is scheduled, it shall be for the purpose of discussing all relief appropriate under the Act. The relief shall be in the form of compensatory relief and/or other remedies deemed appropriate, but shall not include punitive damages.
- 717.3 At the conciliation conference and during the entire period of conciliation, discussions on the merits of the complaint shall not be entertained.
- 717.4 If the endeavors to conciliate succeed, a written conciliation agreement shall be prepared by and executed between the parties, subject to the approval of the Director.
- 717.5 The conciliation agreement shall not constitute an admission by the respondent of any violation of the law, federal or local.
- 717.6 The terms of a conciliation agreement may require a respondent to refrain from committing specified discriminatory practices in the future, and, within the judgment of the Office, to take such affirmative action as will effectuate the purpose of the Act.
- 717.7 The terms of a conciliation agreement may also include consent by the respondent to the entry of a consent decree in a court of competent jurisdiction, embodying the terms of the conciliation agreement.
- 717.8 When a conciliation agreement has been fully executed, it shall be binding on all parties. The parties shall waive all rights to file a subsequent complaint based on issues which could have been included in the conciliation charge or based on issues arising out of the same facts addressed in the complaint.
- 717.9 If during conciliation efforts, the respondent offers a remedy that would place the complainant in the same position that the complainant would have been in had the alleged discriminatory practice not occurred, and the complainant refuses to accept the offer, and if the Director determines that the offered remedy would make the complainant whole, the Director may order the complaint dismissed.
- 717.10 The period for conciliation shall extend for thirty (30) days from receipt of the notice inviting the parties to conciliate the complaint.
- 717.11 Conciliation shall be considered to have failed if, during the thirty (30) day conciliation period, the respondent refuses to participate in conciliation, or if the respondent's offer of a remedy is such that it will not make the complainant whole and the complainant refuses to accept the offer.
- 717.12 A complaint by either party alleging that the terms of a conciliation agreement are not being complied with shall be submitted to the Director for review.

- 717.13 Upon receipt of a charge of noncompliance with a conciliation agreement, the Director shall notify the party being charged with the noncompliance, and permit the party an opportunity to respond to the charge.
- 717.14 The Director shall review the charge of noncompliance, the conciliation agreement, and the response to determine whether the terms are being complied with.
- 717.15 If it is determined that the terms of a conciliation agreement are being complied with, the parties shall be notified and the complaint of noncompliance shall be dismissed.
- 717.16 If it is determined that the terms of a conciliation agreement are not being complied with, the party guilty of noncompliance shall be notified and given five (5) calendar days, after receipt of the notice, to comply. If the party fails to comply within the given time, the agreement shall be referred to the Office of the Attorney General (OAG) for enforcement.
- 717.7 Pursuant to the Age Discrimination in Employment Act of 1967, approved December 15, 1967 (81 Stat. 602; 29 U.S.C. § 621 *et seq.*), the complainant may withdraw his or her agreement to settle within seven (7) calendar days of signing the agreement.

## **718 FAILURE OF CONCILIATION AND CERTIFICATION TO COMMISSION**

- 718.1 If conciliation efforts fail, the Director shall certify the complaint to the Commission and shall serve written notice on the parties that conciliation efforts were not successful.
- 718.2 The notice required by § 718.1 shall be served in the name of the Commission, together with a copy of the complaint or amended complaint, and require the respondent to answer the charges at a public hearing before one or more members of the Commission or before an Administrative Law Judge. The notice shall be served by registered or certified mail, return receipt requested, or by personal service.
- 718.3 The hearing before the Commission or an Administrative Law Judge shall be scheduled not less than ten (10) days or not more than thirty (30) days after service of notice and at a place to be specified in the notice.

## **719 DISMISSAL FOR LACK OF PROBABLE CAUSE**

- 719.1 If, after the investigation and recommendation by OGC, the Director determines that there is no probable cause to credit the complaint, the Director shall issue an order dismissing the complaint.
- 719.2 The Director shall serve a copy of an order dismissing the complaint for lack of probable cause on all parties and shall advise the complainant of the right to apply to the Director for reconsideration of the dismissal.**720 RECONSIDERATION**

- 720.1 A complainant seeking reconsideration of a dismissal under § 719.1, or a respondent seeking reconsideration under § 716.3, shall submit an application for reconsideration to the Director in writing, stating specifically the grounds upon which the request for

reconsideration is based. The grounds shall be limited to misapplication of law, material misstatement of fact, or discovery of evidence not available during the investigation.

- 720.2 If the request is not based on one of the grounds cited in § 720.1, or is not timely filed, the Director shall reject the application for reconsideration. A request for reconsideration shall be filed with the Director's office, in writing, within fifteen (15) calendar days from the receipt of the Director's LOD.
- 720.3 Upon receipt of an application for reconsideration, the Director shall send letters acknowledging receipt of the application to both the complainant and the respondent. The respondent shall also receive a copy of the grounds upon which the complainant bases the request for reconsideration, and shall be given ten (10) calendar days from receipt of the information to file a response.
- 720.4 If, after review of a timely-filed application for reconsideration and the response thereto, the Director concludes that the complainant has not presented evidence that would warrant change, modification, or reversal of the prior dismissal, the Director shall affirm the original no probable cause finding.
- 720.5 If the Director concludes that the complainant has provided sufficient evidence to raise a genuine issue of law or fact, the complaint shall be reopened for further investigation.
- 720.6 If the respondent adequately refutes the allegations presented in the application for reconsideration, the prior dismissal shall be affirmed and the parties notified.
- 720.7 Where the complainant raises issues of material misstatement of fact or discovery of evidence not available during the investigation, and if the respondent fails to respond within the required time period or fails adequately to refute the allegations in the application for reconsideration, the Director shall reopen the complaint for further investigation.
- 720.8 If, at the end of further investigation and after considering the record as a whole, the Director concludes that the complainant has not presented sufficient evidence to warrant a change of the prior dismissal, the prior dismissal shall be affirmed, and the parties notified in writing.
- 720.9 If the Director determines, after further investigation, that a prior dismissal should be reversed, the Director shall find probable cause to credit the complaint, and the parties shall be served with a detailed written basis for the reversal and afforded an opportunity to conciliate.

## **721 SUBPOENAS**

721.1 Subpoenas issued by the Director may require the following:

- (a) The attendance and testimony of witnesses;

(b) The production of evidence, including, but not limited to, books, records, correspondence, or documents in the possession or under the control of the person subpoenaed; and

(c) Access to evidence for the purpose of examination and copying.

721.2 The form, issuance, and manner of service of subpoenas shall be as prescribed by the Rules of Civil Procedure of the D.C. Superior Court.

721.3 A subpoena shall do the following:

(a) State the name and address of its issuer;

(b) Identify the evidence or person to be subpoenaed;

(c) Identify the person to whom and the place, date, and time at which the subpoena is returnable;

(d) Identify the nature of the evidence which is to be examined or copied; and

(e) State the date and time when access is requested.

721.4 A subpoena shall be returnable to a duly authorized investigator or other representative of the Director.

721.5 Upon failure of any person to comply with a subpoena issued under this section, the Office shall request that the OAG undertake appropriate action to compel compliance with the subpoena.

721.6 Witnesses who are subpoenaed shall be entitled to the same fees and mileage that are paid to witnesses under the schedule used by the D.C. Superior Court.

## **722 CLASS ACTIONS**

722.1 A complaint containing a request for class certification may be filed either by an individual complainant or by an organization. Upon receipt of a notarized class action complaint, the Office shall within fifteen (15) days serve on the respondent a notice of the complaint and a copy of the complaint. The respondent shall, within ten (10) days of the receipt of the notice, file a written answer to the request for class certification.

722.2 Within thirty (30) calendar days of receipt of a notarized class action complaint, the Director shall certify the class only if all of the following are satisfied:

(a) The class is so numerous that joinder of all injured persons is impracticable;

(b) Common questions of law and fact exist as to the injured persons;

(c) Claims or defenses of the named complainant(s) are typical of the claims or defenses of the class members;

(d) The named complainant(s) will fairly and adequately represent and protect the interests of the class; and

(e) The party opposing the class acted on grounds applicable to the class.

722.3 The decision of the Director to certify a class shall be served on the complainant and the respondent in writing. When the Director denies certification of a class, the complaint shall be considered as an individual action. The time limitations in § 712 shall begin on the date that the parties receive notification of the Director's decision to certify or to deny certification of a class.

722.4 The time limits in § 712 may be adjusted at the discretion of the Director for a complaint certified as a class action.

### **723 DISCLOSURES**

723.1 Documents in the complaint file shall be made available to the parties through a FOIA request after an administrative dismissal, withdrawal of the complaint, or after the issuance of an LOD.

723.2 If an LOD has been issued, only the parties can request the documents after a reconsideration. The complaint file is considered confidential and only the parties may request documents in the official complaint file.

723.3 Internal agency communications, mediation documents, investigator's notes, supervisory memoranda of instructions, and recommendations shall not be made available to the parties.

723.4 The request for documents shall be made pursuant to FOIA.

### **724 REPORTING REQUIREMENT**

724.1 An employer, employment agency, or labor organization subject to the Act and Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*) shall be considered to be in compliance with the reporting requirements of section 213 of the Act (D.C. Official Code § 2-1402.13) if it has duly filed the EEO-1, EEO-2, or EEO-3 report with the U.S. Equal Employment Opportunity Commission, and the report is made available to the Office.

### **725 INTERNAL OPERATING GUIDELINES**

725.1 The Office shall compile, publish, and maintain a standard operations procedural manual (SOP) which will include, among other things, guidelines for each of the steps required to discharge the primary responsibility of processing complaints of discriminatory practices or policies. Upon request, the Office shall make a copy of the SOP available to any person wishing to examine it.

**799**      **DEFINITIONS**

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

**Aggrieved Party** - any person claiming to be aggrieved by an unlawful discriminatory practice.

**Act** - the District of Columbia Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*).

**Commission** - the Commission on Human Rights, as established by section 401 of the Act (D.C. Official Code § 2-1404.01).

**Complainant** - any person or organization filing a complaint with the Office.

**Complaint** - a notarized statement filed with the Office that sets forth a claim of discrimination.

**Day** - a calendar day, unless otherwise specified.

**Director** - the Director of the Office, or a member of the Office staff specifically delegated the authority to act for the Director.

**Office** - the District of Columbia Office of Human Rights, as established by section 202 of the Act (D.C. Official Code § 2-1411.01).

**Party or Parties** - the complainant or the respondent.

**Position Statement** - the respondent's official response to the allegations in the Charge of Discrimination.

**Respondent** - any person specified in the complaint as having engaged in an unlawful discriminatory practice.

## PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKINGFORMAL CASE NO. 1077, IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS LIGHT COMPANY, DISTRICT OF COLUMBIA DIVISION, FOR REMOVAL OF TARIFF LANGUAGE REFERENCING THE LEAST COST PLANNING SURCHARGE

1. The Public Service Commission of the District of Columbia (“Commission”) hereby gives notice, of its final rulemaking action taken on August 31, 2009, in Order No. 15537, approving the Application of the Washington Gas Light Company (“WGL” or “Company”) removing language in its tariff referencing the Least Cost Planning (“LCP”) Surcharge.<sup>1</sup>

2. On April 27, 2009, WGL filed a Revised Tariff Application removing language in its tariff referencing the LCP Surcharge.<sup>2</sup> WGL states that it is removing the language from its tariff because the Company has fully recovered LCP costs from its customers.<sup>3</sup>

3. A Notice of Proposed Rulemaking (“NOPR”) was published in the *D.C. Register* on June 26, 2009, requesting public comment on WGL’s Application.<sup>4</sup> No comments were received. The Commission, in Order No. 15537, approved WGL’s Revised Tariff, effective upon publication of this Notice of Final Rulemaking in the *D.C. Register*.

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<sup>1</sup> *Formal Case No. 1077, In the Matter of the Application of Washington Gas Light Company, District of Columbia Division, for Removal of Tariff Language Referencing the Least Cost Planning Surcharge (“F.C. 1077”),* filed April 27, 2009 (WGL’s Revised Tariff Application”). The Commission notes that WGL’s Application was filed in *F.C. 921*, which is a closed case. As a result, the Commission opened *F.C. 1077* to act on WGL’s Application.

<sup>2</sup> *F.C. 1077*, WGL’s Revised Tariff Application.

<sup>3</sup> *Id.*

<sup>4</sup> 56 *D.C. Register* 5110-5111 (June 26, 2009).