

Presented and Adopted: September 2, 2021

SUBJECT: Approval to Publish the Notice of Proposed Rulemaking to Amend Retail Sewer Rates Regulations to Establish a New High Flow Filter Backwash Sewer Rate for Fiscal Year 2022

**#21-75
RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**

The District members of the Board of Directors (“Board”) of the District of Columbia Water and Sewer Authority (“DC Water”) at the Board meeting held on September 2, 2021 upon consideration of a non-joint use matter, decided by a vote of six (6) in favor and none (0) opposed, to approve the following actions with respect to the publication of the Notice of Proposed Rulemaking to amend Retail Sewer Rates regulations to establish a new High Flow Filter Backwash Sewer Rate for Fiscal Year 2022.

WHEREAS, the Board has adopted a revised rate setting policy that calls for rates, charges and fees that, together with other revenue sources, yield a reliable and predictable stream of revenues to generate sufficient revenues to pay for DC Water’s projected operating and capital expenses; and

WHEREAS, on July 27, 2021, the DC Retail Water and Sewer Rates Committee met to consider proposed amendments to the Retail Sewer Rates regulations to establish a new High Flow Filter Backwash Sewer Rate consistent with the Cost of Service Study, dated May 20, 2021; and

WHEREAS, DC Water engaged Raftelis Financial Consultants, Inc. to prepare a Cost of Services Study entitled, “Washington Aqueduct Discharge Rate Calculation for FY 2022,” dated May 20, 2021, calculated an appropriate rate for transporting and treating filter backwash flows from the Washington Aqueduct (WAD); and

WHEREAS, the proposed High Flow Filter Backwash Sewer Rate, if adopted, would consist of a sewer rate of \$3.03 per one hundred cubic feet (“Ccf”) (\$4.05 per 1,000 gallons) for filter backwash discharge applicable to the following conditions: (a) the discharge must exceed an annual average of one (1) million gallons per day (MGD) but not more than ten (10) MGD; (b) the discharge must be interruptible and only occur during periods of dry weather flow, as determined by DC Water; and (c) the discharge must be subject to a wastewater discharge permit.

WHEREAS, on July 27, 2021, after considering the need for the new High Flow Filter Backwash Sewer Rate, the DC Retail Water and Sewer Rate Committee recommended

the Board approve the publication of the Notice of Proposed Rulemaking to amend the Retail Sewer Rates regulations to establish a new High Flow Filter Backwash Sewer Rate for FY 2022; and

WHEREAS, on September 2, 2021, after consideration of the recommendation of the DC Retail Water and Sewer Rates Committee, the District members of the Board of Directors, upon further consideration and discussion, approved establishing a new High Flow Filter Backwash Sewer Rate for FY 2022.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Board approves the publication of the Notice of Proposed Rulemaking to establish a new High Flow Filter Backwash Sewer Rate for FY 2022 as follows:

Section 4101, RATES AND CHARGES FOR SEWER SERVICE, of Chapter 41, RETAIL WATER AND SEWER RATES, of Title 21 DCMR, WATER AND SANITATION, shall be amended as follows:

4101 RATES AND CHARGES FOR SEWER SERVICE

4101.8 High Flow Filter Backwash sewer rate shall be three dollars and three cents (\$3.03) per Ccf (\$4.051 per 1,000 gallons) and applicable to the following conditions:

- (a) the discharge must exceed an annual average of one (1) million gallons per day (MGD), but not more than an annual average of ten (10) MGD;
 - (b) the discharge must be interruptible and only occur during periods of dry weather flow, as determined by DC Water; and
 - (c) the discharge is subject to a wastewater discharge permit.
2. The General Manager is authorized to take all steps necessary in his judgment and as otherwise required, to initiate the public comment process and shall publish the Notice of the Proposed Rulemaking and Notice of Public Hearing in accordance with the District of Columbia Administrative Procedure Act and D.C. Official Code § 34-2202.16.
 3. This resolution is effective immediately.


Secretary to the Board of Directors

Presented and Adopted: September 2, 2021

SUBJECT: Approval to Publish Notice of Proposed Rulemaking to Amend 21 DCMR Chapter 4 Contested Water and Sewer Bills Regulations

**#21-76
RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**

The District members of the Board of Directors (“Board”) of the District of Columbia Water and Sewer Authority (“DC Water”) at the Board meeting held on September 2, 2021 upon consideration of a non-joint use matter, decided by a vote of six (6) in favor and none (0) opposed, to approve the following action with respect to the proposal to amend the 21 DCMR Chapter 4, Contested Water and Sewer Bills Regulations.

WHEREAS, on July 27, 2021, the DC Retail Water and Sewer Rates Committee met to consider proposed amendments to 21 DCMR Chapter 4, Contested Water and Sewer Bills Regulations, as proposed by the General Manager; and

WHEREAS, the General Manager recommended amendments consistent with D.C. Law 23-0229, *District of Columbia Water and Sewer Authority Omnibus Amendment Act of 2020* (“Act”), effective March 16, 2021, which codified provisions related to the process of contested water and sewer bills; make the provisions clearer for pro se customers taking advantage of the bill challenge process; codified the reasonable practices of DC Water’s Customer Care Division; and updated outdated and confusing procedures; and

WHEREAS, the General Manager recommends amending the 21 DCMR Chapter 4, Contested Water and Sewer Bills Regulations as presented in Attachment A; and

WHEREAS, on July 27, 2021, upon further discussion and consideration of the General Manager’s recommendation, the DC Retail Water and Sewer Rates Committee recommended to the Board approve the publication of the Notice of Proposed Rulemaking to amend the 21 DCMR Chapter 4, Contested Water and Sewer Bills Regulations as presented in Attachment A.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Board approves the publication of the Notice of Proposed Rulemaking to amend 21 DCMR Chapter 4, Contested Water and Sewer Bills Regulations as presented in Attachment A. The redlined version is presented in Attachment B.

2. The General Manager is authorized to take all steps necessary in his judgment and as otherwise required, to initiate the public comment process as required by the District of Columbia's Administrative Procedures.

This resolution is effective immediately.


Secretary to the Board of Directors

Attachment A

Proposed Amendments to 21 DCMR Chapter 4
Contested Water and Sewer Bills Regulations

CHAPTER 4, CONTESTED WATER AND SEWER BILLS of Title 21 DCMR, WATER AND SANITATION, shall be amended as follows:

400. RIGHT TO CHALLENGE GENERAL MANAGER'S DECISIONS AND BILLS

400.1 The owner or occupant of the premises may contest any water bill, sanitary sewer service bill or groundwater sewer service bill rendered for the premises, or any determination of practicability made by the General Manager pursuant to Section 207 of this title, by following the procedures set forth in this Chapter.

400.2 The owner or agent of the owner may contest any determination of practicability made by the General Manager pursuant to Section 5403 of this title, or any determination of imminent threat made by the General Manager pursuant to Section 5405 of this title, by following the procedures set forth in this Chapter.

400.3 In all cases where a bill or a determination as to practicability made by the General Manager pursuant to Chapter 2 and Chapter 54 or a determination as to imminent threat pursuant to Chapter 54 is contested, the procedures set forth in this Chapter shall apply and take precedence of any inconsistent provisions of this title to the extent of that inconsistency.

400.4 Any owner or occupant shall have the right to inspect DC Water records regarding his or her account upon request during the normal business hours of the DC Water.

400.5 An applicant or holder of a certificate to test backflow preventers may contest any decision by the General Manager to deny, suspend or revoke a certificate pursuant to § 5408 by following the procedures set forth in this Chapter.

400.6 A User may appeal a final decision made by the General Manager pursuant to Chapter 15 of this title by following the procedures set forth in this Chapter.

400.7 A Non-Residential Customer may appeal a determination issued by the General Manager denying a Zero FOG Discharge Exemption issued pursuant to Subsection 112.13 of this title by following the procedures set forth in this Chapter.

401. NOTICE OF RIGHT TO CHALLENGE BILLS, AND PRACTICABILITY AND IMMINENT THREAT DETERMINATIONS

401.1 Each water, sewer, and groundwater sewer service bill shall contain a written

statement advising the owner or occupant of the following:

- (a) The owner or occupant may challenge the bill in accordance with the provisions of § 402, provided that the owner or occupant must timely challenge each bill separately for any challenges made under § 402.1 (a).
- (b) Upon receipt of a challenge to a water, sewer and groundwater sewer service bill, DC Water will investigate the bill;
- (c) If DC Water finds the bill to be erroneous, it shall adjust the bill accordingly and credit the account in accordance with section 409.4 of this chapter;
- (d) The owner or occupant will not be subject to any penalty, interest charge or termination of service for nonpayment of the disputed bill until the owner or occupant has been advised in writing of the results of the investigation;
- (e) The owner or occupant will be notified in writing of the results of the investigation;
- (f) If the bill has not been paid, the owner or occupant will be notified in writing of the amount found to be due as a result of the investigation, and the date on which the bill shall be paid;
- (g) The owner or occupant may request a hearing in writing, within fifteen (15) days of the date of the decision, if he or she is not satisfied with the decision of DC Water; and
- (h) The owner or occupant may request a written statement of billing, for the most recent two (2) year billing and payment history of the account. Upon receipt of a written request, DC Water shall prepare this statement of billing within thirty (30) days.

401.2 Each determination of practicability made by the General Manager pursuant to § 207 of this title shall contain a written statement advising the owner or occupant of the following:

- (a) The owner or occupant may challenge the determination in accordance with the provisions of § 402;
- (b) Upon receipt of a challenge to a determination of practicability, DC Water will investigate the determination; and
- (c) The owner or occupant will be notified in writing of the results of the investigation and the date and time of any hearing, if required.

401.3 Each determination of practicability made by the General Manager pursuant to §

5403, each determination of imminent threat made by the General Manager pursuant to § 5405 and each denial, suspension or revocation of certification to test backflow preventers made by the General Manager pursuant to § 5408 shall contain a written statement advising the applicant or certificate holder of the following:

- (a) The owner or owner's agent, applicant or certificate holder may challenge the denial, suspension or revocation of certification in accordance with the provisions of § 402; and
- (b) The owner or owner's agent, applicant or certificate holder shall be notified in writing of the date and time of any hearing, if required.

401.4 A determination issued by the General Manager denying a Zero FOG Discharge Exemption shall contain a written statement advising the customer of the following:

- (a) The Customer may challenge the denial in accordance with the provisions in Section 402;
- (b) The Customer may request a hearing in writing, within fifteen (15) days of receipt of the General Manager's written determination, if he or she is not satisfied with the General Manager's determination; and
- (c) The Customer shall be notified in writing of the date and time of any hearing, if requested.

402 INITIATING A CHALLENGE

402.1 An owner or occupant may challenge the charges assessed by DC Water for water, sewer and groundwater sewer service, or any other billed service as follows:

- (a) Billing disputes involving usage, meter accuracy, meter malfunction, or leaks, the owner or occupant may dispute the bill by:
 - 1. Paying the current charges in the bill and notifying DC Water in writing, within twenty (20) calendar days after the bill date, the reason(s) why the bill is believed to be incorrect and that the bill is being paid under protest; or
 - 2. Not paying the current charges in the bill and notifying DC Water in writing, within twenty (20) calendar days after the bill date, the reason(s) why the bill is believed to be incorrect.
- (b) All other disputes regarding billing charges not covered by section 402.1(a), such as erroneous classification due to failure of DC Water to change

classification after receiving notice of change by customer, misapplication of account credits, incorrect impervious area, incorrect meter size, or payments applied to the wrong account, the owner or occupant may dispute those charges by:

1. Paying the current charges in the current bill and notifying DC Water in writing, within two (2) years after the date of the alleged erroneous charges, the reason(s) why the current charge and any similar charges issued within two (2) years of the date of written notice of dispute is believed to be incorrect and that the current bill is being paid under protest; or
 2. Not paying the current charges in the bill and notifying DC Water in writing, within twenty (20) calendar days after the bill date, the reason(s) why the bill is believed to be incorrect; or
 3. For issues related to misapplication of account credits or payments applied to the wrong account, notifying DC Water in writing, two (2) years of the misapplied credit and/or payment, requesting a review of the account for misapplied credits and/or payments.
- (c) Disputes under § 402.1(a) and § 402.1(b)(2), each bill challenge only applies to the current bill; the owner or occupant must file a separate dispute for each future bill.
- (d) Disputes under § 402.1(b)(1):
1. May be treated as continuous and will apply to future bills until the General Manager has issued a decision.
 2. The owner or occupant continues to pay the current monthly bill or the General Manager, at the General Manager's sole discretion, has agreed to a temporary billing arrangement.
- (e) Disputes under § 402.1(b), DC Water may review bills rendered within two (2) years prior to the date of written notice of the dispute.

402.2 Challenges will be deemed to be filed untimely as follows:

- (a) Challenges under § 402.1(a) will be untimely if made more than twenty (20) days after the bill date.
- (b) Challenges under § 402.1(b)(1) will be untimely if made more than two (2) years after the bill date.

- (c) Challenges under § 402.1(b)(2) will be untimely if made more than twenty (20) days after the bill date.
- (d) Challenges under § 402.1(b)(3) will be untimely if made more than two (2) years after the misapplied credit and/or payment.
- (e) Challenges made more than twenty (20) days under §§ 402.1(a)(2) and (b)(2) shall be subject to the imposition of a penalty for nonpayment of charges as provided in 21 DCMR 112 and/or termination of service for nonpayment.
- (f) Challenges made more than twenty (20) days under § 402.1(a) may not be investigated as provided under Section 403.

402.3 Nothing in this section shall be interpreted to relieve the owner or occupant of responsibility for paying all previously or subsequently rendered, uncontested water, sewer and groundwater sewer service charges, penalties, interest, and administrative costs.

402.4 An owner or occupant may appeal a practicability determination made by the General Manager pursuant to Section 207 by filing a petition for an administrative hearing within fifteen (15) calendar days of the date of the notice required in § 207. This petition shall be filed in accordance with the requirements set forth in Section 412 of this chapter, "Petition for Administrative Hearing".

402.5 An owner or owner's agent may appeal a practicability determination made by the General Manager pursuant to Section 5403 by filing a petition for an administrative hearing within fifteen (15) calendar days of the date of the notice required in Section 5403. This petition shall be filed in accordance with the requirements set forth in Section 412 of this chapter "Petition for Administrative Hearing".

402.6 An owner or owner's agent may appeal a determination of imminent threat made by the General Manager pursuant to § 5405 by filing a petition for an administrative hearing within fifteen (15) calendar days of the date of the termination. This petition shall be filed in accordance with the requirements set forth in Section 412 of this chapter "Petition for Administrative Hearing."

402.7 Non-residential and multi-family owners or their agents may seek an impervious surface area charge adjustment under Subsection 402.1 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 and multi-family 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 DC Water.

402.9 A User subject to the requirements of Chapter 15 of this title, may appeal any of the following final decisions made by the General Manager by filing a petition for an administrative hearing in accordance with the requirements set forth in Section 412 entitled "Petition for Administrative Hearing":

- (a) Determination that a Users uncontaminated non-wastewater flows are discharging to a sewer specifically designated as sanitary sewer;
- (b) Determination regarding the issuance, revocation, or non-transferability of a Wastewater Discharge Permit, or the terms and conditions of a Wastewater Discharge Permit;
- (c) Determination regarding the issuance, suspension, termination, or denial of a Temporary Discharge Authorization or Waste Hauler Discharge Permit, or the terms and conditions of a Temporary Discharge Authorization or Waste Hauler Discharge Permit; and
- (d) Determination regarding the suspension of water and sewer service due to an imminent danger to the environment or the operation or integrity of the District's wastewater system.

402.10 A Non-Residential Customer subject to the requirements of Subsection 112.13 of this title, may appeal the General Manager's determination denying a Zero FOG Discharge Exemption by filing a petition for an administrative hearing within fifteen (15) days of the date of the General Manager's written determination in accordance with the requirements set forth in Section 412 entitled "Petition for Administrative Hearing".

403. INVESTIGATION OF CHALLENGED BILL

403.1 Upon receipt of a timely challenge to a water, sewer or groundwater sewer bill, DC Water shall suspend the obligation of the owner and occupant to pay the contested charges contained in the disputed bill and the owner or occupant will not be subject to any penalty, interest charge or termination of service for nonpayment of the disputed bill until the owner or occupant has been advised in writing of the results of the investigation.

403.2 As necessary to investigate the challenge, DC Water may:

- (a) Verify the computations made in the formulation of the water and sewer charges;
- (b) Verify the meter reading;

- (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
- (d) Check the meter for malfunction by removing and testing the meter;
- (e) Review account to ensure accurate account status; and
- (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

403.3 DC Water may request that the customer submit a plumber's report stating that there are no leaks on the property and that no issues on private property are contributing to increase water usage.

404. REPORT AND ADJUSTMENT

404.1 Upon completion of the investigation, DC Water shall issue a written decision containing a brief description of the investigation and findings.

404.2 On the basis of the investigation and findings, DC Water shall make appropriate adjustments to the bill for water or sewer charges in accordance with the provisions of this Chapter.

405. ADJUSTMENT FOR METER OR COMPUTATION ERRORS

405.1 If the investigation discloses meter overread or faulty computation, adjustment(s) shall be made to reflect the correct charges, as indicated by the correct reading or corrected computations.

405.2 If the meter test results confirms meter overread on a DC Water issued meter, the water and sewer service bill shall be adjusted to equal the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available.

405.3 If the meter test results confirms meter overread on a DC Water issued meter, and the investigation concerns groundwater sewer service, the groundwater sewer service bill shall be adjusted to equal the average groundwater meter registration at the same premises for up to three (3) previous comparable periods for which records are available.

405.4 If records for up to three (3) previous comparable billing periods are not available, the bill shall be adjusted based on the actual usage for the first comparable billing period after the meter has been replaced.

406. ADJUSTMENT FOR HOUSEHOLD LEAKS OR AIR CONDITIONING MALFUNCTION

406.1 The repair of leaking faucets, household fixtures, and similar leaks, and the repair of malfunctioning water-cooled air conditioning equipment, are the responsibility of the owner or occupant.

406.2 If the investigation discloses leaking faucets, leaking fixtures, or similar leaks, no adjustment will be made to the bill for any portion of the excessive consumption attributable to those leaks.

406.3 If the investigation discloses a malfunctioning water-cooled air conditioning system, no adjustment will be made to the bill for any portion of the excessive consumption attributable to that air conditioning system malfunction.

407. ADJUSTMENT FOR LEAKS WHICH OCCUR BETWEEN THE METER AND THE STRUCTURES THAT ARE SERVED BY THE METER AND FOR UNDERGROUND LEAKS

407.1 When a meter leak is discovered due to a DC Water issued meter, the Authority shall make the repairs to the meter. A licensed plumber may make the necessary repairs at the expense of the Authority if the amount and nature of the repairs is approved in advance by the General Manager but only if the General Manager has not determined that the leak constitutes an emergency or unsafe condition.

407.2 If the investigation indicates a possible a leak in underground service pipe, the General Manager shall investigate the cause and location when notified of the possibility of leaks. If the investigation discloses a leak, other than a meter leak, of indeterminate location in the underground service, or at some other location where the leak is not apparent from visual or other inspection, the General Manager shall determine whether the leak is on public space, on private property, on property that is under the control of the occupant, or the result of infrastructure for which the owner or occupant is responsible for maintaining and repairing.

407.3 If, pursuant to § 407.2 the leak is determined to have been caused by the Authority, or is determined to be the result of infrastructure for which the Authority is responsible for maintaining and repairing, the Authority shall repair the leak and the General Manager shall adjust the bill to equal the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available. If the leak is determined to have been caused by the owner or occupant, no adjustment shall be made.

407.4 If, pursuant to § 407.2 the leak is determined to be on private property or on property that is under the control of the owner or occupant, or the result of

infrastructure for which the owner or occupant is responsible for maintaining and repairing, the owner or occupant shall repair the leak. The General Manager may, at their discretion, upon request of the owner, adjust the disputed bill and any bills issued during the investigation for a period not to exceed (30) calendar days and following the issuance of the bill investigation report.

407.5 The adjusted amount, in accordance with 407.4, shall not exceed 50% of the excess water usage -over the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available. The General Manager may take the following into consideration in determining whether there should be a reduction in the bill(s):

- (a) There has been no negligence on the part of the owner or occupant in notifying DC Water of unusual conditions indicative of a waste of water;
- (b) The owner has repaired the leak within 30 calendar days after the bill investigation report is issued to the owner or occupant;
- (c) The owner provides evidence that repairs have been made and that those repairs were performed by a licensed District of Columbia master plumber in accordance with the rules and regulations of the District of Columbia Department of Consumer and Regulatory Affairs; and
- (e) The request for adjustment has been made in accordance with § 402.1 (a).

407.6 The General Manager may, at their discretion, adjust up to 100% of the excess sewer charges resulting from an underground leak if it is determined that the excess water usage did not enter the wastewater system.

407.7 No Adjustment shall be made if the leak is determined to have been caused by the owner or occupant.

408. INCONCLUSIVE FINDINGS

408.1 In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved at the sole discretion of the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.

409. NOTICE OF INVESTIGATION RESULTS AND ADJUSTED BILLS

409.1 After reviewing the report and making any adjustments to the water or sewer

service charges, in accordance with the provisions of this Chapter, the Authority shall mail or email, where an email address is available on the account, written notice of the following to the owner or occupant:

- (a) The results of the investigation; and
- (b) If an adjustment is warranted, the amount of the adjustment.

409.2 An owner or occupant may appeal the General Manager's decision by filing a petition for an administrative hearing within fifteen (15) calendar days of the date of the decision.

409.3 The new date for payment of the original or adjusted bill, as set forth in the notice, shall not be less than fifteen (15) days after the mailing date of the notice.

409.4 If the original bill was paid and an adjustment is warranted:

- (a) The amount of the overcharge shall be credited to the account and applied first to any outstanding account balance;
- (b) If after the adjustment and any outstanding account balance has been paid, the customer may request DC Water to issue a refund for any credit balance that remains
- (c) If after the adjustment and any outstanding account balance has been paid, the customer does not request a refund, any credit will remain on the account and applied to future charges.

409.5 The notice shall also inform the owner or occupant of the right to appeal the determination and bill (or amended bill) set forth in the notice, and shall set forth the following:

- (a) The requirements for filing the appeal under § 410.2; and
- (b) If an appeal is filed, there will be no penalty or service cut-off for non-payment of the bill until the appeal has been considered and he or she has been notified in writing of the results of the appeal and a new date for payment

410. ADMINISTRATIVE HEARINGS

410.1 The purpose of hearings held under this Section is to provide the petitioner with an opportunity to appeal the decision of the General Manager pertaining to:

- (a) The validity of any water, sewer or groundwater sewer service charge;

- (b) The practicability determination made pursuant to Section 207 of Chapter 2 regarding metering of groundwater flows;
- (c) A practicability determination made pursuant to Section 5403 of Chapter 54 regarding the installation of backflow preventers to prevent cross connections;
- (d) An imminent threat determination made pursuant to Section 5405 of Chapter 54;
- (e) A denial, suspension, or revocation of a certificate to test backflow preventers pursuant to Section 5408 of Chapter 54;
- (f) The determination that a User's uncontaminated non-wastewater flows are discharging to a sewer specifically designated as sanitary sewer;
- (g) Issuance, revocation, or non-transferability of a Wastewater Discharge Permit, or the terms and conditions of a Wastewater Discharge Permit;
- (h) Issuance, suspension, termination, or denial of a Temporary Discharge Authorization or Waste Hauler Discharge Permit, or the terms and conditions of a Temporary Discharge Authorization or Waste Hauler Discharge Permit;
- (i) Suspension of water and sewer service due to an imminent danger to the environment or the operation or integrity of the District's wastewater system;
- (j) The Zero FOG Discharge Exemption determination that a Food Service Establishment has the potential to discharge oil and grease laden wastewater to the District's wastewater system; and
- (h) Any other decision under this Title that explicitly grants the right to appeal the General Manager's decision.

410.2 The rules of procedure set forth in this Section shall govern the form, content and filing of requests for a hearing to contest water, sewer and groundwater service charges, interest, penalties, fees and determinations of practicability made pursuant to Chapter 2.

410.3 Petitioner shall have the right to do the following:

- (a) Represent themselves or be represented by an attorney;
- (b) To present their case or defense by oral or documentary evidence;

- (c) To submit evidence in rebuttal; and
- (d) To conduct a cross-examination as may be required for a full disclosure of the facts.

411. COMPUTATION OF TIME

- 411.1 The computation of any period of time prescribed or allowed by this Chapter, by notice, order, rule or regulation to DC Water, or by statute, shall not include the day of the act, event, bill, notice or default.
- 411.2 The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until midnight of the next day which is not a Saturday, Sunday, or legal holiday.
- 411.3 Whenever a party is required to serve papers or do some act within a prescribed period, and does so by mail, three (3) days shall be added to the prescribed period.
- 411.4 Days as used in this chapter shall refer to calendar days unless otherwise specified.

412. PETITION FOR ADMINISTRATIVE HEARING

- 412.1 An owner or occupant may file a petition for an administrative hearing to review the decision of the General Manager within fifteen (15) calendar days of the date of the decision.
- 412.2 A petition for an administrative hearing shall be made in writing within fifteen (15) calendar days of the date of the notice specified by § 409.1 of this Chapter.
- 412.3 Petitions for review shall be filed with:

District of Columbia Water and Sewer Authority
ATTN: Administrative Hearings
1385 Canal Street SE
Washington, DC 20003

413. SURETY BOND/DEPOSIT

- 413.1 The owner or occupant shall post a surety bond or deposit, equal to not less than one-half (1/2) of the outstanding water, sewer, or groundwater sewer service charges, penalties, and interest owed at the time the request for administrative hearing is made.

- 413.2 The requirement to post a surety bond or deposit shall not apply to an owner who occupies the single-family house where the contested charges were incurred.
- 413.3 The deposit shall be in the form of a certified check or money order. The deposit shall be placed in an escrow account and accrue interest. The interest rate shall be determined based on the Annualized Treasury Bill Yield Rate, which is published in nationally circulated newspapers, including the Washington Post and the New York Times. If more than one rate is published, the lowest rate shall be used.
- 413.4 A surety bond shall accrue interest only if it is in a form that is equivalent to cash.
- 413.5 Upon receipt of the surety bond or deposit, the portion of the water and sewer charges being challenged shall not be subject to penalty or interest, and service shall not be terminated for non-payment of the contested charges, until a final decision has been rendered.
- 413.6 The owner or occupant shall pay all charges not in dispute within thirty (30) days of the date that the bill for such charges is rendered.

414. HEARING OFFICERS

- 414.1 Upon the filing of a request for hearing, the General Manager may conduct a hearing or assign a hearing officer ("hearing officer") to the case. Thereafter, all motions and procedural requests shall be addressed to the hearing officer.
- 414.2 No hearing officer shall conduct a hearing in a proceeding in which he or she is prejudiced or partial with respect to any owner or occupant, or where that officer has any interest in the matter pending for decision.
- 414.3 No hearing officer shall have the authority to overrule any law or regulation of the District of Columbia.
- 414.4 The hearing officer shall have the following powers:
- (a) To give notice concerning hearings;
 - (b) To administer oaths and affirmations;
 - (c) To examine witnesses and to take testimony;
 - (d) To issue subpoenas and order the parties to submit documents or other evidence;

- (e) To request that investigative reports be prepared by DC Water in instances where the reports do not exist;
- (f) To grant requests for discovery, if the discovery is necessary for the disposition of the appeal;
- (g) To rule upon offers of proof and to receive relevant evidence;
- (h) To regulate the course and conduct of hearings;
- (i) To hold conferences, before or during a hearing, for the settlement or simplification of issues;
- (j) To rule on motions and to dispose of procedural requests or similar matters;
- (k) To issue final decisions as provided in this Section or by law;
- (l) To adjust the charges for water, sewer, and groundwater sewer service based upon facts adduced at hearings held pursuant to this Chapter;
- (m) To adjust the charges for groundwater sewer service based upon a challenge to a determination of practicability made pursuant to § 207; and
- (n) To take any other action authorized by this Chapter, the Administrative Procedure Act, or by any other applicable statute, rule or regulation.

415. SCHEDULING OF HEARING/DEFAULT JUDGMENT

415.1 The hearing officer shall set the date, time and place of the hearing.

415.2 The hearing officer may agree to reschedule the hearing upon the written request of one of the parties for good cause shown or upon the consent of all parties.

415.3 The failure to appear at the scheduled hearing or to request, in advance, that the scheduled hearing be postponed, may result in a default judgment.

415.4 The hearing officer may issue a final order affirming the imposition of any charges, fines, interest and penalties that the DC Water has assessed against the property by default.

415.5 Failure to comply with the conditions imposed by the hearing officer may result in the entry of a default judgment.

416. DISMISSAL OF HEARINGS

- 416.1 A petitioner may request a dismissal by filing a written motion with the hearing officer or orally requesting dismissal at the hearing.
- 416.2 DC Water may request a dismissal by filing a written motion with the hearing officer or orally requesting dismissal at the hearing.
- 416.3 If a written motion to dismiss is filed, the opposing party shall have fourteen (14) calendar days to file an opposition to the motion with the hearing officer.
- 416.4 The hearing officer may, on his or her own motion, dismiss a hearing demand, either entirely or as to any stated issue, under any of the following circumstances:
- (a) Where the matter or issue has previously been the subject of a hearing;
 - (b) The petitioner failed to appear at a hearing, and the owner or occupant failed to request a continuance or show good cause for failing to appear;
 - (c) Where the owner or occupant requesting a hearing is not a lawful owner or occupant or does not otherwise have a right to a hearing. This would include, but is not limited to, cases in which the individual is not the owner or occupant;
 - (d) Where the petitioner has failed to file a timely hearing demand pursuant to the provisions of this Chapter; and
 - (e) Where the hearing officer, in his or her opinion, finds that a petition filed in any proceeding does not raise a question of fact or law or the claim is frivolous.
- 416.5 The dismissal shall be in the form of an order by the hearing officer, which shall contain a statement of facts and law and the reason for the dismissal. No such order shall be necessary where all the parties have expressly requested the dismissal.
- 416.6 The dismissal order shall be given to the parties or mailed to them at their last known address.

417. SERVICE OF DOCUMENTS

- 417.1 The initial document filed by any party shall state on the first page the name and post office address of the person or persons to be served with any documents filed in the proceeding.
- 417.2 Whenever any document is filed by any party with the hearing officer, copies shall be served by the filing party upon all parties to the proceedings.
- 417.3 Service may be made by regular mail, by registered or certified mail, or by personal delivery.
- 417.4 Service upon a party or an attorney of record or designated representative of a party shall occur at the time of hand delivery; by email if one is on record; or if by mail, to the address

of record, by the postmark date plus three (3) days, as prescribed in § 411.3.

418. PROOF OF SERVICE

418.1 A party filing a document with the hearing officer shall furnish written proof that a copy also has been sent to every other party.

418.2 The proof shall show the date and manner of service and may be as follows:

- (a) Written acknowledgement of service;
- (b) Affidavit of the person making service;
- (c) Certificate of an attorney of record; or
- (d) By other proof satisfactory to the hearing officer.

418.3 Acknowledgement of service may be made by any person at the address shown on the document who is sixteen (16) years of age or older.

419. STYLE OF PLEADINGS AND PETITIONS

419.1 All pleadings, notices, orders and other papers filed under the provisions of this Chapter shall be captioned "Before the District of Columbia Water and Sewer Authority."

419.2 A document shall contain the DC Water Docket Number if assigned.

419.3 Each petition filed under this Chapter shall be styled in the manner of pleadings as provided in this Section.

419.4 Each document shall contain a title appropriate to the proceedings which describe generally the type of document, such as one of the following:

In the Matter of the _____ (Charges, Interest, Penalties, and Fees) for the water and sewer services rendered to _____ (Property Address) owned by _____ (Name of Owner of Record) and occupied by _____ (Name of Occupant)

419.5 Upon filing, each petition shall be given a docket number and shall become a matter of public record.

419.6 Each petition shall contain the following:

- (a) Facts related to the water and sewer service account including the following:
 - (1) The account number;
 - (2) The service address;

- (3) The name of the party who holds the account;
 - (4) The type of property and number of units;
 - (5) If petitioner is disputing billing charges, the date of the bill(s) in dispute and
 - (6) The number of people residing at the service address during the period of the disputed bill(s).
- (b) A concise statement of the facts concerning the dispute;
 - (c) Supporting data, facts, or evidence upon which petitioner relies as justification for the dispute; and
 - (d) If petitioner is disputing billing charges, a request for adjustment of the water and sewer service charges.

420. HEARINGS

420.1 A party to any hearing may invite any member of the public to attend the hearing.

420.2 Hearings shall be held at the location indicated on the hearing notice; Provided, that the hearing officer, at his or her discretion, may establish other permanent or temporary hearing locations.

420.3 The hearing officer shall ensure that the hearing is conducted in an orderly manner and shall have the authority to exclude any owner or occupant or other person from the hearing on the grounds of substantial interference with, or obstruction of, an orderly hearing process.

420.4 If an owner or occupant requests a hearing on charges from more than one water and sewer service or groundwater sewer service billing period, the hearing officer may consolidate the hearings.

420.5 The Rules of Civil Procedure and the Rules of Criminal Procedure for the Superior Court of the District of Columbia are not binding for these administrative hearings.

420.6 All testimony shall be given under oath or affirmation administered by the hearing officer.

420.7 The burden of proof shall be on the parties seeking relief.

420.8 The standard of proof shall be a preponderance of the evidence.

420.9 Hearing officers assigned to render a decision in any proceedings under this Chapter shall not communicate, directly or indirectly, with any person involved in or affiliated with any of the parties, except upon notice and opportunity for all parties to participate.

420.10 If any person refuses to respond to a subpoena, refuses to take the oath or affirmation

as a witness, refuses to be examined, or refuses to obey any lawful order of the hearing officer, the hearing officer may petition the Superior Court of the District of Columbia for an order requiring compliance.

420.11 The hearing officer shall follow the general rules of evidence applicable to administrative hearings under the District of Columbia Administrative Procedure Act. P.L. 90-614 (D.C. Code § 2-501 *et seq.*

421. ARGUMENT BEFORE THE HEARING OFFICER

421.1 The hearing officer shall give the parties to the proceeding adequate opportunity during the course of a hearing for the presentation of arguments in support of or in opposition to the petition for administrative review, motions, objections, and exceptions to the rulings of the Officer.

421.2 The hearing officer may impose time limits on the arguments.

421.3 Oral argument shall be recorded and will be available as part of the record.

422. FINAL DECISIONS

422.1 The hearing officer shall issue a final decision containing a concise statement of facts and conclusions of law.

422.2 The final decision shall include specific findings on each issue of fact and shall be based upon reliable, probative, and substantive evidence. Mere conclusory assertions or summaries of evidence shall not constitute a sufficient basis for findings or fact within the meaning of this Section.

422.3 The final decision of the hearing officer shall be based upon consideration of the entire record of the proceeding, and no evidence, information, or other knowledge, except that of which official notice is taken, shall be considered.

422.4 If the hearing officer rules in favor of the owner or occupant, and finds that the owner or occupant has made payments in excess of the amount due:

- (a) The amount of the overcharge shall be credited to the account and applied first to any outstanding account balance.
- (b) If after the adjustment and any outstanding account balance has been paid, the customer may request DC Water to issue a refund for any credit balance that remains.
- (c) If after the adjustment and any outstanding account balance has been paid, the customer does not request a refund, any credit will remain on the account and applied to future charges.

422.5 If the hearing officer rules in favor of the DC Water, and finds that the owner or occupant has outstanding water and sewer charges, the owner or occupant shall be required to pay the difference between the amount in escrow, if any, and the amount of outstanding charges, penalties, interest, and fees within fifteen (15) days of the notice of the decision.

423. PAYMENT

423.1 Checks or money orders shall be made payable to the "District of Columbia Water and Sewer Authority."

423.2 Certified checks or cash shall be required for payments exceeding two hundred dollars (\$200).

423.3 If any check or other instrument offered to make any payment due is dishonored, the owner or occupant shall be responsible for any fees established by DC Water.

424. TRANSCRIPTS OF HEARING

424.1 Transcripts of the hearing proceedings may be ordered through a form provided by the General Manager.

424.2 The costs for transcript(s) of the hearing record shall be borne by the party requesting the transcript.

424.3 Fees for transcripts shall be at a rate set by the General Manager based on the costs DC Water has incurred.

424.4 Transcripts may be ordered upon payment of a deposit, the amount of which shall be set by the General Manager.

424.5 When the cost of the transcript has been determined to be less than the amount of the transcript deposit, the amount by which the deposit exceeds the cost of the transcript shall be refunded.

424.6 When the cost of the transcript is determined to exceed the amount of the transcript deposit, the petitioner shall be notified in writing of the balance due for preparing the transcript. The balance due shall be paid before the transcript is released.

424.7 If the owner or occupant fails to make a payment when due as required by this Section or if any check offered to make payment is dishonored, the request for the transcript shall be dismissed, and the deposit shall not be refunded.

424.8 Changes in the official transcripts shall be made only when they involve errors of substance.

424.9 A motion to correct a transcript shall be filed with the hearing officer and the other party within ten (10) days after receipt of the transcript.

424.10 If no objections to the motion are filed within ten (10) days after the filing of the motion, the transcript may, upon the approval of the chief hearing officer, be changed to reflect the corrections.

424.11 If objections to a motion to correct a transcript are received, the motion and objection shall be submitted to the reporter or transcriber by the chief hearing officer with a request to compare the transcript with the stenographic or other record of the hearing.

424.12 After receipt of the transcriber's report, an order shall be entered by the hearing officer settling the record and ruling on the motion.

425. TERMINATION OF WATER AND SANITARY SEWER SERVICES FOR NONPAYMENT

425.1 The purpose of this Section is to establish the criteria and procedures for terminating water and sewer services for nonpayment of any charges, penalties, interests, or fees permitted by law to be assessed against the owner or occupant of real property.

425.2 Except as otherwise provided in this Chapter, DC Water shall provide the owner or occupant with a final notice specifying that the water and sewer services will be terminated.

425.3 The final notice shall specify the date that service will be subject to termination.

425.4 In deciding whether or not to terminate water and sewer services for a delinquent account, the General Manager may consider the following:

- (a) Whether a tenant is eligible to establish an account in his or her own name;
- (b) The payment history of the owner or occupant;
- (c) Any other factor relevant to the efficacy of alternate methods of collecting the amounts due and owing; and
- (d) Whether the owner or occupant has applied for any customer assistance programs for which the owner or occupant is eligible.

426. HONORING REQUESTS FROM OWNERS FOR TERMINATION OF WATER AND SEWER SERVICE

426.1 DC Water, upon receipt of a written request from the owner of a property provided water and sewer services, shall terminate services when one of the following conditions exists:

- (a) The property is vacant;
- (b) There is an outstanding delinquent balance on the account;

- (c) The water and sewer service has been terminated for nonpayment, and it is verified that service has been restored by the occupant or someone solicited by the occupant, without the authorization of DC Water; or
- (d) The owner provides documentation that the property is occupied by parties without a legal right to be on the property and who occupy the property without the consent of the owner.

426.2 DC Water may request the owner to provide a notarized affidavit stating that the property is vacant or that it is occupied by parties without a legal right to be on the property and who occupy the property without the consent of the owner.

426.3 DC Water may determine that the request for termination of service will not be honored if the property is occupied and any of the following conditions exists:

- (a) There is no delinquent balance on the account and the property is occupied by tenants or others with the consent of the owner; or
- (b) The owner is the account holder, the tenant agrees to assume prospective responsibility for prospective water and sewer charges and the General Manager determines that it is practicable for the tenant to assume responsibility for the water and sewer charges.

427. REAL PROPERTY LIENS AND TAX SALE

427.1 When bills for water and sewer service charges, meter maintenance and repairs, or sanitary sewer services are more than sixty (60) days overdue, DC Water shall provide the owner of record with a written notice of intent to file a lien.

427.2 The written notice shall state the following:

- (a) The outstanding balance;
- (b) A notice that if the bills are not paid in full or payment arrangements are not made within fourteen (14) calendar days of the date of the notice, a certificate of delinquency may be filed by DC Water with the Recorder of Deeds;
- (c) That a certificate of delinquency shall constitute a lien against the real property; and
- (d) The owner of a single family home has the opportunity to present evidence that he or she occupies the premises.

427.3 The owner of a single family home who occupies the premises shall present evidence of occupancy within fourteen (14) calendar days of the date of the notice of intent.

427.4 Acceptable evidence of occupancy shall include the following with personal identifiable

information redacted (e.g. social security number, date of birth and financial account number):

- (a) Income tax returns;
- (b) Non-driver's identification card or a valid driver's license;
- (c) The most recent electric, gas or telephone bill;
- (d) Proof of eligibility of Homestead Deduction in accordance with DC Official Code § 47-850; and
- (e) Other documentation considered credible by DC Water, including but not limited to a notarized affidavit.

427.5 Single family homes that are owner occupied, shall not be sold at tax sale for delinquent water and sewer charges, but a lien shall be attached to the real property until the outstanding balance is paid in full.

427.6 At the end of the fourteen-calendar day (14) period, if the balance has not been paid in full, a Certificate of Delinquency shall be filed by DC Water and mailed, by certified mail, to the owner of record at the address listed by the Office of Tax and Revenue for the receipt of tax notices.

427.7 Real property tax sales pursuant to this Section shall be conducted by the Office of Tax and Revenue.

427.8 The rules and regulations applicable to tax sales used by the Office of Tax and Revenue shall govern tax sales, under this Section.

427.9 If a rule or regulation of the Office of Tax and Revenue conflicts with a provision of the District of Columbia Water and Sewer Operations Amendment Act of 1990, (D.C. Law 8-136) or any statute governing the enforcement of water and sewer liens at tax sale, D.C. Law 8-136 or the applicable statute shall govern.

427.10 The Director of the Department of Housing and Community Development may submit bids for properties to be included in the housing program, authorized by § 2 of the Act, and to make payments to the Water and Sewer Enterprise Fund from appropriations or sums otherwise provided.

428. OPPORTUNITY FOR A TENANT TO RECEIVE SERVICE IN OWN NAME

- 428.1 DC Water may permit the tenant(s) to receive the bills in their own name, when the owner or agent of the rental property fails to pay the delinquent account in full and it is determined to be practicable.
- 428.2 At least ten (10) working days prior to terminating water and sewer services to the premises, DC Water shall send a notice to the tenant(s) in accordance with § 425.2.
- 428.3 Once it is determined that the tenants will be billed directly for water and sewer charges, DC Water will read the meter on service at the affected address and render a final bill to the owner or the agent for the owner.
- 428.4 If water and sewer charges incurred by the tenant(s) remain unpaid for more than thirty (30) days after the rendering of a bill for the charges, penalties and interest shall be applied to the tenant's outstanding charges, and water and sewer services may be terminated.
- 428.5 If water and sewer service charges billed directly to the tenant or tenants are unpaid and result in the termination of services, the tenant or tenants shall be required to pay all delinquent charges, penalties, interest and fees incurred during the period they received bills.
- 428.6 If service has been terminated due to a delinquent tenant account, services shall not be restored until all charges, penalties, interest and fees for the property are paid in full.

429. SPECIAL PROVISIONS GOVERNING MASTER-METERED APARTMENT BUILDINGS

- 429.1 Section 428 shall apply to all master-metered water and sewer accounts in residential rental apartment buildings billed directly to the owner, agent, lessor, or manager of the premises (hereinafter referred to as "owner").
- 429.2 DC Water shall provide the tenants with the opportunity to assume prospective financial responsibility for the water and sewer services pursuant to the provisions of §§ 428 and 430.

430. DETERMINATION OF PRACTICABILITY

- 430.1 DC Water may decide to continue water and sewer service to any master-metered residential, rental apartment building despite the nonpayment of a delinquent

account by the owner, if the General Manager determines that it is practicable for the tenants to assume prospective financial responsibility for water and sewer services by receiving the service in their own names, either individually or collectively, on the same terms as any other customer and without any liability for the amount due while service was billed directly to the owner.

430.2 In order to qualify as a tenant group or association, the group or tenant association shall provide documentation that the following requirements have been met:

- (a) It is appointed as the authorized agent for each tenant;
- (b) Have capital reserves equal to the estimated quarterly water and sewer service charges for the premises;
- (c) It is authorized to collect water and sewer charges from each tenant and to pay the charges;
- (d) Have a written agreement specifying the fair and equitable apportionment of the water bill to each tenant, and the tenant's agreement to pay his or her portion of the bill to the tenant group or association in a timely manner;
- (e) Maintain its records and a system of accounts in a manner consistent with generally accepted accounting principles;
- (f) Agree to make its financial records available for inspection by the tenant; and
- (g) Obtain a bond to guarantee the integrity of its financial transactions.

430.3 The General Manager may find that it is practicable to meter each apartment on the premises if the following requirements are met:

- (a) The owner of the premises agrees in writing to install individual meters for each unit on the premises at the owner's expense and risk;
- (b) The owner agrees in writing to complete the installation within sixty (60) days of the date of the written agreement; and
- (c) Each tenant agrees in writing to establish an individual account in his or her name.

430.4 The General Manager may permit tenants to assume prospective financial responsibility for water and sewer service charges if there exists a tenant group or association that is willing and able to accept responsibility for collecting water and sewer bill payments from each tenant at the premises, and of paying each bill when it becomes due.

430.5 The General Manager shall prepare a finding of practicability which contains the following information:

- (a) The address of the premises;
- (b) The name of the owner;
- (c) The number of units;
- (d) A determination of whether it is feasible to meter each unit on the premises, pursuant to the provisions of § 430.3 of this Chapter;
- (e) If individual metering is not feasible, whether a tenant group or association exists which meets the requirements of § 430.2, and that the requirements of this Chapter have been met; and
- (f) Any other information pertaining to the premises and its service which may have a bearing on the General Manager's decision on practicability.

431. NOTICE TO TENANTS

431.1 At least fourteen (14) calendar days prior to terminating water and sewer services to the premises, the General Manager shall post notice outside the premises.

431.2 The notice shall provide the tenant(s) with the following information:

- (a) The owner is delinquent in the payment of water and sewer service charges;
- (b) Water and sewer services to the premises may be terminated;
- (c) DC Water may permit the tenants to establish a water and sewer account in their own names if the General Manager considers it is practicable under the provisions of § 430.1 of this Section;
- (d) The tenants may petition the Superior Court to establish a receivership;
- (d) The tenants have the right to deduct all future payments made by the tenants for water and sewer services from rent owed as provided by DC Official Code § 34-2303 (b).
- (f) The tenants may request to receive service in their own name either individually or collectively in accordance with the provisions of § 428;

- (g) The time period within which the tenants or their authorized agents must request to assume prospective responsibility for water and sewer service charges; and
- (h) The mailing address and telephone number of the office within DC Water, where the tenants can obtain additional information.

431.3 Each tenant shall agree in writing to establish an individual or collective water and sewer utility service account within thirty (30) days of the date on the notice issued pursuant to § 431.2.

431.4 Each tenant shall establish individual water and sewer service accounts within sixty (60) days of the date the General Manager finds that the following requirements are met:

- (a) It is practicable to install individual meters for each unit on the premises, and
- (b) A tenant group that meets the requirements of this Chapter exists.

431.5 The tenants' group or association shall establish a water and sewer service account within thirty (30) days of the date the Director determines that it is practicable for the tenants to assume prospective responsibility for water and sewer and groundwater sewer service charges.

431.6 Tenants who move into the premises shall execute the agreement with the tenant group or association or establish an individual account.

431.7 The failure to execute a written agreement for individual or collective accounts and to establish a water and sewer service account in a timely manner shall result in the termination of water and sewer services to the premises.

432. TENANT PAYMENT OF WATER AND SEWER SERVICE BILL

432.1 The General Manager may terminate water and sewer service to the premises of a tenant who has agreed to accept responsibility for payment of water and sewer services charges individually or with a tenant association when the tenant or the tenant group or association is delinquent in payment.

432.2 The rights of the tenant group or association shall terminate upon the occurrence of any of the following:

- (a) The failure to make timely payments;
- (b) The failure of the tenant group or association to maintain bonding;

- (c) The failure of the tenant group or association to keep adequate records; or
- (d) The failure of the tenant group or association to obtain the consent of all the premises' tenants, including the consent of all tenants who move into the premises after the account is established.

432.3 Upon termination of the tenant group or association's account, DC Water shall bill the owner of the property directly for water and sewer charges.

499. DEFINITIONS

499.1 When used in this Chapter, the following words and phrases shall have the meanings ascribed:

Comparable periods -

- (a) No change in occupancy;
- (b) The same or like seasons; and
- (c) The same or like number of days and billing periods.

General Manager - The chief administrative officer of the District of Columbia Water and Sewer Authority or his or her designee.

Meter - Includes any device which is used to measure the amount of water utilized by consumers.

Occupant - any individual, corporation, association or partnership who holds or possesses a premises in subordination to the title of the owner of the premises, with the consent of the owner.

Owner - any individual, corporation, association, or partnership listed as the legal title holder of record.

Petitioner - an owner, occupant, owner's agent, applicant for certification to test backflow preventers or a holder of a certificate to test backflow preventers.

Practicable - For purposes of Section 430, a finding made by the General Manager that it is feasible to individually meter each apartment on the premises, or that there exists a tenant group or association that meets DC Water's requirements.

Privately owned water meter - meter required to be installed, at no cost to DC Water, for the measurement of water supplied and used by commercial and industrial users or by premises with three (3) or more separate dwelling units.

Single family home - means a housing unit designed and maintained for occupancy by only one family.

Tenant - any person who holds or possesses a habitation in subordination to the title of the owner of the premises in which the habitation is located, with the consent of the owner.

DC Water - the District of Columbia Water and Sewer Authority or its lawful agent, successor in interest or designee.

This rulemaking will be effective upon publication of the Notice of Final Rulemaking in the *D.C. Register*.

Presented and Adopted: September 2, 2021
SUBJECT: Approval to Publish Notice of Emergency and Proposed Rulemaking to Extend the DC Water Cares Emergency Relief Program for Low-Income Customers (Residential Assistance Program “RAP”) and Multifamily Assistance Program for Low Income Multifamily Tenants (Multifamily Assistance Program “MAP”) for Fiscal Year 2022 and Extend FY 2021 CAP2 Eligibility to FY 2022

#21-77
RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

The District members of the Board of Directors (“Board”) of the District of Columbia Water and Sewer Authority (“DC Water”) at the Board meeting held on September 2, 2021 upon consideration of a non-joint use matter, decided by a vote of six (6) in favor and none (0) opposed, to approve the following action with respect to the proposal to extend the DC Water Cares Emergency Relief Program for Low-Income Customers (“Residential Assistance Program” or “RAP”) and Multifamily Assistance Program for Low-Income Multifamily Tenants (“MAP”) for Fiscal Year 2022 and Extend FY 2021 CAP2 Eligibility to FY 2022.

WHEREAS, on September 3, 2020, the Board, through Resolution #20-65, approved the allocation of \$3 million to continue the District’s Emergency Residential Program in FY 2021 to provide one-time assistance up to \$2,000 to residential customers economically impacted by COVID-19 and to allocate \$7 million to establish a new program to provide one-time assistance to multi-family buildings where the occupants have been impacted by COVID and payment plans are established and adhered with the assistance determined and provided per affordable unit, and on a matching basis; and

WHEREAS, pursuant to Resolution #21-15, dated February 4, 2021, DC Water published the Notice of Final Rulemaking in the *D.C. Register* on February 19, 2021 at 68 DCR 2085, to finalize the rules and continue the implementation of the DC Water Cares – Emergency Relief Program for Low-Income Residential Customers (Residential Assistance Program (RAP)), which the Board on November 20, 2020 authorized for emergency implementation through Resolution # 20-82; and

WHEREAS, pursuant to Resolution #21-42, dated May 6, 2021, DC Water published the Notice of Final Rulemaking in the *D.C. Register* on May 21, 2021 at 68 DCR 5438, to finalize the rules and continue the implementation of the DC Water Cares: Multifamily Assistance Program (MAP) for Low-Income Multifamily Tenants, which the Board on

February 4, 2021 authorized for emergency implementation through Resolution #21-14; and

WHEREAS, the Board, through Resolutions #21-15 and 21-42, required the benefits provided under the DC Water Cares: RAP and MAP programs would only be provided for Fiscal Year 2021, and terminate on September 30, 2021 unless approved by the Board to continue in FY 2022; and

WHEREAS, on July 27, 2021, the DC Retail Water and Sewer Rates Committee met to consider extending the DC Water Cares: RAP and MAP for Fiscal Year 2022; and

WHEREAS, on July 27, 2021, the General Manager presented the proposal to extend the DC Water Cares: RAP and MAP to Fiscal Year 2022; and

WHEREAS, the General Manager proposed amendments to DC Water Cares: RAP and MAP to reflect the extension to Fiscal Year 2022; and amendments to DC Water Cares: MAP to permit Multi-family Customers to participate in the program regardless whether their tenants receive federal or District assistance to pay for water and sewer services, which will allow tenants to receive MAP assistance in addition to Stronger Together by Assisting You (STAY DC) and other assistance programs; to revise the benefit calculation dates from an average of 3-months from 4/1/20 to 12/31/20 to 10/1/20 to 9/30/21; and revise the past due balance period from 12/31/20 to 9/30/21; and

WHEREAS, residential customers eligible to receive DC Water Cares: RAP emergency assistance" shall be single-family or individually metered customers eligible for CAP with household income below sixty percent (60%) of the State Median Income (SMI) for the District of Columbia or CAP2 with household income between sixty percent (60%) of the SMI for the District of Columbia and below eighty percent (80%) of the Area Median Income (AMI) for the District of Columbia, not capped by the United States median low-income limit as determined by the Department of Energy and Environment; and

WHEREAS, multifamily tenants will continue to be eligible to receive assistance if they reside in an affordable housing unit or have an annual household income is equal to or below eighty percent (80%) of the Area Median Income (AMI) for the District of Columbia, not capped by the United States median low-income limit; and

WHEREAS, multifamily tenants are categorically eligible will continue to be eligible to receive assistance if they: 1) receive assistance for public benefits programs, including, but not limited to, the Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), or medical assistance programs, through Medicaid, Alliance and DC Healthy Families programs as determined by the District of Columbia Department of Human Services, 2) receive Low-Income Energy Assistance Program (LIHEAP) or Utility Discount Program (UDP) assistance as determined by District Department of Energy and Environment; or apply for assistance and their household income is equal or below 80% AMI as determined by DOEE; and

WHEREAS, the DC Water Cares RAP and MAP shall terminate at the end of Fiscal Year 2022, but may continue subject to Board approval; and

WHEREAS, on July 27, 2021, the Board through Resolution #21-74, authorized the General Manager to carryover the remaining unexpended approximately \$1.45 million of the \$3 million authorized for the RAP and \$4.21 million of the \$7 million of the authorized for MAP funds to the Fiscal Year 2022 Budget for the DC Water Cares Residential Assistance Program and Multifamily Assistance Programs, which will continue to provide benefits up to \$2,000 per household for eligible low-income Residential Customers and Multifamily Tenants impacted by COVID-19 with household income levels equal to or below 80% of the Area Medium Income (AMI); and

WHEREAS, on July 27, 2021 the General Manager recommends the immediate extension of the DC Water Cares: RAP and MAP to make these assistance programs available to eligible Residential Customers and tenants in Multifamily Customer properties due to ongoing economic impacts as a result of COVID-19, which continue to be acute, causing the number of potential eligible customers in arrears to increase, and the uncertainty of District and federal assistance programs to provide sufficient assistance, to address the accumulating outstanding balances; and

WHEREAS, on July 27, 2021, DC Retail Water and Sewer Committee, after having evaluated the proposal to extend the DC Water Cares: RAP and MAP programs, the recommendation of the General Manager, and the Board's authorization to carryover remaining DC Water Cares: RAP and MAP funds, recommended that the Board adopt and approve the publication of the Notice of Emergency and Proposed Rulemaking (NOEPR) for immediate implementation and public comment amendments to the Customer Assistance Program regulations to extend the DC Water Cares: RAP and MAP programs for Fiscal Year 2022; and

WHEREAS, on August 9, 2021, the Public Service Commission, through Order 20990, authorized the waiver of the recertification requirements for all Fiscal Year 2021 Utility Discount Programs participants to be categorically eligible for Fiscal Year 2022; DOEE has waived the recertification requirements for all Fiscal Year 2021 CAP3 participants to be categorically eligible for Fiscal Year 2022, and DC Water's Fiscal Year 2021 CAP customers are effectively recertified for FY 2022; however Fiscal Year 2021 CAP2 customers are required to reapply for benefits in Fiscal Year 2022 because the Customer Assistance Program regulations specifically require annual recertification; and

WHEREAS, on August 31, 2021, the DC Retail Water and Sewer Rates Committee met to consider waiving FY 2021 CAP2 customer recertification requirements for FY 2022; and

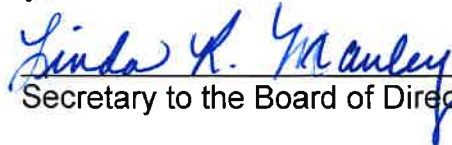
WHEREAS, on August 31, 2021, the General Manager discussed the actions of the Public Service Commission August 9, 2021 that effectively waives the recertification of Fiscal Year 2021 CAP customers, but has no effect on the Fiscal Year 2021 CAP2

customers, and his recommendation that the Board amend the Customer Assistance Program CAP2 regulations to waive Fiscal Year 2021 CAP2 Customer's recertification requirements for Fiscal Year 2022; and

WHEREAS, on August 31, 2021, DC Retail Water and Sewer Committee, after having evaluated the proposal to waive Fiscal Year 2021 CAP2 Customer's recertification requirements for Fiscal Year 2022 and the recommendation of the General Manager, recommended that the Board adopt and approve the publication of the Notice of Emergency and Proposed Rulemaking (NOEPR) for immediate implementation and public comment amendments to the Customer Assistance Program regulations to waive Fiscal Year 2021 CAP2 customer's recertification requirements and be categorically eligible to receive CAP2 benefits in Fiscal Year 2022.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Board hereby adopts and approves the publication of the Notice of Emergency and Proposed Rulemaking (NOEPR) to amend 21 DCMR 4102 Customer Assistance Program as recommended by the DC Retail Water and Sewer Rates Committee and the General Manager to extend the DC Water Cares: RAP and MAP, effective for 120 days as provided in Attachments A and B.
2. The Board hereby adopts and approves the amendment to the CAP2 regulations in the NOEPR to authorize the recertification of the FY 2021 CAP2 customers as categorically eligible for CAP2 benefits in FY 2022, effective for 120 days, as provided in Attachment C.
3. The General Manager shall amend the Customer Assistance Programs regulations as provided in Attachments A, B and C.
4. The General Manager is authorized to take all steps necessary in his judgment and as otherwise required, to initiate the public comment process and shall publish the Notice of the Emergency and Proposed Rulemaking and Notice of Public Hearing in accordance with the District of Columbia Administrative Procedure Act and implementing rules and D.C. Official Code § 34-2202.16.
5. This resolution is effective immediately.


Secretary to the Board of Directors

Attachment A

Subsection 4102.9, DC Water Cares Emergency Relief Program for Low-Income Residential Customers, of Section 4102, CUSTOMER ASSISTANCE PROGRAMS, is amended to read as follows:

4102.9 DC Water Cares Emergency Relief Program for Low-Income Residential Customers

- (a) Participation in the DC Water Cares Emergency Relief Program (DC Water Cares) shall be limited to a single-family or individually metered low-income Residential Customer that meets the following eligibility requirements:
 - (1) The applicant maintains an active DC Water account and is responsible for paying for water and sewer services; and
 - (2) DOEE has determined that the applicant's annual household income is equal to or below eighty percent (80%) of the Area Median Income (AMI) for the District of Columbia, not capped by the United States median low-income limit.
- (b) An approved customer shall receive the following benefits:
 - (1) Credit of one hundred percent (100%) off of the past due water and sewer bill balance; and
 - (2) The total amount of credits provided shall not exceed Two Thousand (2,000) dollars during Fiscal Year 2022.
- (c) Upon DC Water's receipt of notice from DOEE that the applicant meets the financial eligibility requirements, DC Water shall provide the credits to the customer's account from the date that DOEE accepts a completed application and for future qualifying events that may lead to collection activities to the end of the fiscal year in which the application was submitted.
- (d) The DC Water Cares Emergency Relief Program shall terminate on September 30, 2022.
- (e) Customer that received DC Water Cares benefits in FY 2021 must submit a renewal CAP or CAP2 application to DOEE to receive DC Water Cares benefits in Fiscal Year 2022.
- (f) If DC Water determines that the remaining budgeted funds are insufficient to provide DC Water Cares benefits, DC Water may:

- (1) Suspend the process for accepting DC Water Cares applicants; or
- (2) Suspend or adjust providing DC Water Cares benefits to eligible recipients.

This rulemaking will be effective upon Board adoption of the Notice of Emergency and Proposed Rulemaking (NOEPR) for 120 days or upon publication of the Notice of Final Rulemaking (NOFR) in the *D.C. Register*.

Attachment B

Subsection 4102.10, DC Water Cares: Multifamily Assistance Program (MAP), Section 4102, CUSTOMER ASSISTANCE PROGRAMS, is amended to read as follows:

4102.10 DC Water Cares: Multifamily Assistance Program (MAP).

- (a) The DC Water Cares: Multifamily Assistance Program (MAP) provides up to two thousand (\$2,000) per eligible unit of emergency relief to an eligible Occupant residing in a participating Multi-Family Customer's premises.
- (b) For purposes of this subsection, Non-Residential Customers whose premises has four or more dwelling units, are deemed Multi-Family Customers, as defined in 21 DCMR 4104, and eligible to apply to participate in the MAP.
- (c) For purposes of this subsection, the term "Occupant" includes a person that resides in a dwelling unit in an apartment, condominium, or cooperative housing association.
- (d) Multi-Family Customers and their eligible Occupants may participate in the MAP by complying with the requirements in this subsection.
- (e) To participate in the MAP, a Multi-Family Customer shall:
 - (1) Maintain an active DC Water account and be responsible for paying for water and sewer services at a Multi-Family Customer's property that is:
 - (A) Not owned or operated by the District of Columbia or
 - (B) Not owned or operated by the Federal Government.
 - (2) Have one or more eligible Occupant in an active lease or rental agreement, condominium housing association deed or title, or cooperative housing association occupancy agreement or title to reside in their premises;
 - (3) Complete and submit a DC Water Cares: Multifamily Assistance Program Terms and Conditions Application and comply with DC Water requests for information and access to the premises as necessary to determine compliance with the MAP requirements;

- (4) Upon approval to participate in the MAP, comply with all the MAP Terms and Conditions, post the MAP flier in a conspicuous location in the building or include the MAP flier in a notice or invoice to all unit Occupants to inform the Occupants about the MAP and encourage them to apply for assistance, if eligible;
 - (5) Upon receipt of MAP Credits, apply ninety percent (90%) of the MAP Credits to the DC Water approved eligible Occupant's account within thirty (30) days of receipt of the MAP Credit, and the remaining ten percent (10%) shall be maintain as a credit on the DC Water account;
 - (6) Notify the eligible Occupant in writing that the credits were applied to their account within thirty (30) days of the receipt of the MAP Credit;
 - (7) Enter a payment plan agreement with DC Water for any remaining arrears outstanding on the DC Water account within sixty (60) days of receipt of the first MAP Credits;
 - (8) Notify DC Water within thirty (30) days of any change in ownership or the eligible Occupant's occupancy.
- (f) To be eligible to participate in the MAP, an Occupant shall be (1) named on the occupancy agreement, including, but not limited to a lease or rental agreement, condominium deed or title, or cooperative housing association occupancy agreement or title, (2) reside in a Multi-Family Customer's property that is master metered and approved to participate in the MAP, and (3) meet one of the following requirements:
- (1) Reside in an Affordable Housing Unit as defined in 21 DCMR § 199.1, provided the Occupant does not notify DC Water to be excluded from receiving MAP assistance within ten (10) days of receipt of notice of eligibility from DC Water; or
 - (2) Meet the annual household income limits equal to or below eighty percent (80%) of the Area Median Income (AMI) for the District of Columbia, not capped by the United States median low-income limit as follows:
 - (A) Occupant submits a Resident Application for DC Water Cares: Multifamily Assistance Program to the District of Columbia Department of Energy and Environment

(DOEE) and DOEE determines that the applicant meets the annual household income requirements;

(B) Occupant that is eligible to receive Low-Income Energy Assistance Program (LIHEAP) or Utility Discount Program (UDP) assistance during Fiscal Year 2022 as determined by DOEE, shall be categorically eligible to participate in the MAP, provided they do not notify DC Water to be excluded from participating within ten (10) days of receipt of the notice of eligibility from DC Water; or

(C) Occupant that is eligible to receive assistance for public benefits programs during Fiscal Year 2022, including, but not limited to, the Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), or medical assistance programs, through Medicaid, Alliance and DC Healthy Families programs as determined by the District of Columbia Department of Human Services, shall be categorically eligible to participate in the MAP, provided they notify DC Water that they agree to participate in the MAP within ten (10) days of receipt of the notice of eligibility, but not later than September 21, 2022.

(3) Occupant is not eligible to receive MAP assistance if they:

(A) Reside in a dwelling unit that is 100% subsidized.

(g) DC Water shall notify the approved Multi-Family Customer and approved Occupant(s), setting forth the amount of the approved MAP Credits.

(h) DC Water shall apply up to two thousand dollars (\$2,000) in MAP Credits per eligible unit during Fiscal Year 2022 on an approved Multi-Family Customer's DC Water account that has one or more eligible Occupant as follows:

(1) The MAP Credits provided per eligible unit shall be calculated based on the greater of A. or B., which is then divided by the total number of dwelling units in the premises:

(A) The average of the Multi-Family Customer's DC Water charges billed from October 1, 2020 to September 30, 2021 subtracting any amount of water and sewer

charges applicable to any retail/commercial units and that result is multiplied by three (3); or

- (B) Total amount of the outstanding balance on the Multi-Family Customer's DC Water account as of September 30, 2021 subtracting any water and sewer charges applicable to any retail/commercial units.
- (2) DC Water shall revoke the amount of the MAP Credits applied to a Multi-Family Customer's DC Water account and charge the customer's account the full amount of the MAP Credits, if one or more of the following violations is not corrected within ten (10) days of the date of the notice of violation from DC Water:
- (A) Failure to comply with the MAP Terms and Conditions;
 - (B) Failure to enter into a payment plan agreement within sixty (60) days of the receipt of the first MAP Credits to establish a payment schedule for any remaining outstanding charges;
 - (C) Failure to apply the MAP Credits to the Occupant's account within thirty (30) days of receipt of the MAP Credits; or
 - (D) Multi-Family Customer or Occupant commits fraud or makes false statements in connection with the MAP.
- (i) Multi-Family Customer that receives MAP Credits on their DC Water account shall:
- (1) Apply ninety percent (90%) of the total MAP Credits for the approved Occupant on their account within thirty (30) days of the date of the notice of the amount of the Credits from DC Water, and the remaining ten percent (10%) shall be maintain as a credit on the DC Water account;
 - (2) Notify the approved Occupant, in a statement or separate writing, that the credit has been applied to their account within thirty (30) days of receipt of the MAP Credits from DC Water;
 - (3) Notify DC Water within thirty (30) days of any change in ownership if DC Water has not applied the MAP Credits to the Multi-Family Customer's DC Water account;

- (4) Notify DC Water within thirty (30) days of any change in the Occupant's occupancy if the MAP Credits have not been applied to the Occupant's account;
 - (5) Provide the Occupant any MAP Credits remaining in their account if the Occupant terminates their occupancy;
 - (6) Provide, upon DC Water's request, documentation confirming that the MAP Credits have been applied to the Occupant's account;
 - (7) Provide DC Water access to the premises and records to conduct an audit to determine compliance with these regulations and the MAP Terms and Conditions; and
 - (8) Maintain all documents related to the MAP Terms and Conditions Application, receipt and handling of MAP Credits, and notices to approved Occupant(s).
- (j) The DC Water Cares MAP shall terminate September 30, 2021.
 - (k) Multi-Family Customer that received MAP Credits in FY 2021 must submit a renewal DC Water Cares: Multifamily Assistance Program Terms and Conditions Application to DC Water to receive MAP Credits in Fiscal Year 2022.
 - (l) Occupant residing in multifamily properties that received MAP Credits on their account in FY 2021 must submit a renewal Resident Application for DC Water Cares: Multifamily Assistance Program to DOEE to receiving MAP Credits in Fiscal Year 2022.
 - (m) If DC Water determines that budgeted funds are insufficient to provide DC Water Cares MAP Credits, DC Water may:
 - (1) Suspend the process for accepting DC Water Cares MAP applications; or
 - (2) Suspend or adjust providing DC Water Cares MAP Credits to eligible Multi-Family Customer's DC Water account.
 - (n) DC Water shall notify a Multi-Family Customer or Occupant if they are denied eligibility for the MAP by issuing a Notice of Denial, which shall contain a written statement of the basis for the denial and advising the Multi-Family Customer or Occupant of the following:

- (1) Multi-Family Customer or Occupant may challenge the denial of eligibility to participate in the MAP by:
 - (A) Submitting a written Request for Reconsideration within fifteen (15) days of the date of the Notice of Denial; and
 - (B) Providing a statement of the basis why they should be eligible and supporting documentation.
- (2) The General Manager shall review the Request for Reconsideration and make a final determination of eligibility.
- (3) The Multi-Family Customer or Occupant may request an Administrative hearing in writing, within fifteen (15) days of the date of the General Manager's written final determination, if he or she is not satisfied with the General Manager's determination; and
- (4) The Customer shall be notified in writing of the date and time of the Administrative Hearing, if requested.

This rulemaking will be effective upon Board adoption of the Notice of Emergency and Proposed Rulemaking (NOEPR) for 120 days or upon publication of the Notice of Final Rulemaking (NOFR) in the *D.C. Register*.

Attachment C

Subsection 4102.2, Customer Assistance Program II (CAP2), of Section 4102, CUSTOMER ASSISTANCE PROGRAMS, is amended to read as follows:

4102.2 CUSTOMER ASSISTANCE PROGRAM II (CAP2)

- (c) Upon DC Water's receipt of notice from DOEE that the CAP2 customer meets the financial eligibility requirements, DC Water shall provide the CAP2 benefits for not more than the entire fiscal year, beginning October 1st and terminating on September 30th, subject to the availability of budgeted funds.
 - (1) Approved CAP2 customers that submitted a complete application to DOEE before November 1st, shall receive CAP2 benefits retroactive to October 1st and terminating on September 30th of that fiscal year.
 - (2) Approved CAP2 customers that submitted a complete application on or after November 1st, shall receive CAP2 benefits as of the date of submittal and terminating on September 30th of that fiscal year.
 - (3) Customers shall reapply each year for CAP2 benefits to receive CAP2 benefits. For FY 2022, customers that DOEE determined were eligible for CAP2 benefits in FY 2021 are not required to reapply to receive CAP2 benefits in FY 2022, and shall be deemed categorically eligible for CAP2 benefits in FY 2022.

This rulemaking will be effective upon Board adoption of the Notice of Emergency and Proposed Rulemaking (NOEPR) for 120 days or upon publication of the Notice of Final Rulemaking (NOFR) in the *D.C. Register*.