

## DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Acting Director of the Department of Health, pursuant to the authority set forth in §104(a)(1) of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 ("Civil Infractions Act"), effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.04(a)(1)(2007 Repl.)), and § 7(d) of the District of Columbia Smoking Restriction Act of 1979, effective September 28, 1979 (D.C. Law 3-22; D.C. Official Code § 7-1706(d) (2001)), hereby gives notice of his intent to adopt the following amendment to Chapter 36 of Title 16 of the *District of Columbia Municipal Regulations* in not less than thirty (30) days. The purpose of the rulemaking is to establish a schedule of civil infractions for smoking violations as alternative sanctions for criminal penalties.

Pursuant to § 104(a)(1) of the Civil Infractions Act, the proposed rules will be submitted to the Council of the District of Columbia for review and approval. The rules will become effective upon Council approval, or sixty (60) days after submission, if the Council has not earlier disapproved the proposed rules, and publication of the final rules in the *D.C. Register*.

**Chapter 36 (Department of Health (DOH) Infractions) of Title 16 (Consumers, Commercial Practices & Civil Infractions) (July 1998) of the District of Columbia Municipal Regulations is amended by adding a new section 3632 (Smoking Infractions) to read as follows:**

**3632 SMOKING INFRACTIONS**

3632.1 Violation of any of the following provisions shall be a Class 1 infraction:

- (a) 20 DCMR § 2101.5 (failure to prohibit smoking in enclosed area of a place of employment or public place);
- (b) 20 DCMR § 2101.7 (failure to ensure that outdoor smoking area does not encompass area where smoking is prohibited);
- (c) 20 DCMR § 2104.1 (selling, giving, or furnishing tobacco products to a person younger than eighteen (18) years of age);
- (d) 20 DCMR § 2106.5 (having a smoking area that exceeds twenty-five percent (25%) of the total area of a place of employment or public place that is a restaurant);

- (e) 20 DCMR § 2106.5(a), (b), (c), and (d) (failure to comply with additional conditions or restrictions necessary to minimize the adverse effects of smoking where an economic hardship waiver has been granted);
- (f) 20 DCMR § 2107.1 (distributing free cigarettes or other tobacco products to a person on a public street, sidewalk, public park, playground, in a public building, in other public property, or in private property open to the public);
- (g) 20 DCMR § 2107.2 (distributing free cigarettes or other tobacco products to persons eighteen (18) years of age or older in a place other than a tobacco store, convention, or conference catering to persons eighteen (18) years of age or older); and
- (h) 20 DCMR § 2108.1(d) (failure to warn a person observed to be smoking in a “no-smoking” area).

3632.2 Violation of any of the following provisions shall be a Class 2 infraction:

- (a) 20 DCMR § 2101.1 (failure of a place of employment or public place to adopt a smoking policy consistent with the District of Columbia Smoking Restriction Act of 1979 (D.C. Law 3-22; D.C. Official Code § 7-1701 *et seq.*) and the Department of Health Functions Clarification Amendment Act of 2001 (D.C. Law 16-90; D.C. Official Code § 7-741 *et seq.*));
- (b) 20 DCMR § 2101.2 (failure to notify employees, orally and in writing, of the smoking policy for a place of employment or public place);
- (c) 20 DCMR § 2101.4 (failure of an employer or public place to post the smoking policy near similar employee notices);
- (d) 20 DCMR §§ 2103.2, 2103.3, 2103.6(a), 2103.8, and 2108.1(c) (failure to post or maintain properly worded and properly placed “no-smoking” signs);
- (e) 20 DCMR §§ 2103.4, 2103.6(b), and 2103.9 (failure to post properly worded signs designating a smoking area);
- (f) 20 DCMR § 2104.2 (failure to request identification for person attempting to purchase tobacco products who appears to be younger than twenty-five (25) years of age);

- (g) 20 DCMR § 2104.3 (failure to post properly worded and properly sized tobacco health warning signs);
- (h) 20 DCMR § 2104.4 (failure to post properly placed tobacco health warning signs);
- (i) 20 DCMR § 2108.1(a) (smoking in a posted “no smoking” area); and
- (j) 20 DCMR § 2108.1(b) (covering, removing, or disfiguring a smoking-related sign).

Persons desiring to comment on these proposed rules should submit comments in writing to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4<sup>th</sup> Floor, Washington, D.C. 20002, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of these proposed rules may be obtained between 8:30 A.M. and 5:00 P.M. at the address stated above.