

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to authority set forth in An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District, and for other purposes, as amended, approved April 14, 1906 (34 Stat. 114, ch. 1626; D.C. Official Code §6-711.01 *et seq.*), Article III of Reorganization Plan No. 1 of 1983, effective March 31, 1983 and Mayor's Order 83-92, effective April 7, 1983 (30 DCR 1872), hereby gives notice of the intent to adopt the following amendments to Title 14 of the District of Columbia Municipal Regulations (DCMR) in not less than 30 days from the date of the publication of this notice in the D.C. Register. The proposed rules will amend Title 14, Chapter 8, Section 800, General Provisions of the DCMR, by adding Sections 800.8 through 800.23 to establish specific requirements for the removal of trash and weeds, and maintenance of grass, on private property. These proposed rules also bring the maximum grass height level to 10 inches, in conformity with the maximum grass height provisions in the BOCA National Building Code.

Title 14 DCMR (Housing) is amended as following:

CHAPTER 8 HOUSING CODE: CLEANLINESS, SANITATION AND SAFETY

Section 800 is amended by adding new subsections 800.08 through 800.23 as follows:

800 GENERAL PROVISIONS

- 800.08 The owner of any premises shall maintain the premises free of any condition that may render the premises unhealthy or unsanitary for the occupant, the neighborhood or the community at large pursuant to An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District, and for other purposes, approved April 14, 1906 (34 Stat. 114, ch. 1626; D.C. Official Code § 42-3131.01 *et seq.*) (Act).
- 800.09 Premises maintained in violation of this chapter create a danger to the health, welfare or safety of the occupants and public, and, constitute a public nuisance.
- 800.10 Excessive vegetative growth, including but not limited to, kudzu, poison ivy, plants with obnoxious odors, weeds, grasses causing hay fever, and any weed growth that creates a breeding place for mosquitoes, for a period of more than seven (7) calendar days is prohibited. Weeds may be defined as, but are not limited to, poison ivy, poison oak, or poison sumac and all vegetation at any state of maturity which:

- a. Exceeds ten (10) inches in height, is untended, or creates a dense area of shrubbery that is a detriment to the health, safety and welfare of the public;
- b. Regardless of height, creates a harbor (including hiding places for persons), or a concealment for refuse or trash;
- c. Develops into deposits, or accumulation of, refuse or trash;
- d. Harbors rodents and vermin or provides a refuge for snakes, rats or other rodents;
- e. Creates an unpleasant or noxious odor;
- f. Constitutes a fire hazard; or
- g. Contains grass or weeds that are dead and diseased.

800.11 This chapter does not apply to weeds, grasses, or other vegetation, which is planted for agricultural use if such weeds, grasses or vegetation are, located at least one hundred fifty (150) feet from property zoned for non-agricultural use.

800.12 Nothing in this chapter shall prohibit an owner of any premises from maintaining healthy plants, grasses, or shrubbery in tended grounds, gardens, or landscape designed yards, which exceed ten (10) inches in height.

800.13 The accumulation of trash on any premises for more than seven (7) calendar days shall constitute an unsanitary and unhealthy condition if it creates a:

- a. Harbor or concealment (including hiding places for persons);
- b. Deposit or accumulation of refuse or trash;
- c. Harbor for rodents and vermin, or a refuge for snakes, rates or other rodents;
- d. Noxious or an unpleasant odor; or
- e. Fire hazard.

800.14 Owners shall be given a Notice of Violation for failure to comply with the provisions of this chapter.

- 800.15 The owner of the premises may give written consent to the Mayor or his designee authorizing the removal of trash or the mowing of weeds or grass pursuant to a Notice of Violation requiring abatement of a prohibited condition. By giving such written consent, the owner waives the right to an administrative hearing challenging the Mayor's action.
- 800.16 Pursuant to this chapter, the Mayor or his designee is authorized to take summary abatement action to correct a violation of this chapter where a condition exists that imminently endangers the health, safety or welfare of the occupant of the premises or the public.
- 800.17 If the owner of any premises is issued a Notice of Violation but fails to comply with the Notice of Violation, and another Notice is issued for the same condition during the same growing season, the District may summarily abate the nuisance.
- 800.18 The Notice of Violation shall state:
- a. The reason or reasons that support the Notice of Violation;
 - b. The need for the owner of the premises to comply with the requirements of the notice no later than seven (7) days after the date of receipt of the notice, unless within that time the notice has been appealed;
 - c. That the costs for such abatement shall be assessed against the owner of the premises and that failure to pay such costs may result in a lien being placed upon the premises without further notice to the owner.
- 800.19 Service of the Notice of Violation may be effected upon the owner of the premises by personal service, service by mail, or posting on the property or other means set out in 14 DCMR §§ 105-107 (1991).
- 800.20 Civil fines, penalties and fees may be imposed as an alternative sanction for any infraction of the provisions of this chapter, or of any rules or regulations issued under the authority of this chapter, pursuant to Titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985. Adjudication of any infraction of this chapter shall be pursuant to Titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985.
- 800.21 If the Mayor or his designee must summarily abate a nuisance as set forth in this chapter, he or she is authorized to assess the fair market value of the correction or the actual costs of the correction, whichever is higher, and all expenses as a tax on the premises from which the condition arose as

provided in the Act. The tax shall be carried on the District tax roll as a general tax.

800.22 Interest shall accrue on any unpaid bill at the rate of one and a half percent (1 ½ %) per month, or part thereof, from the date of the bill pursuant to D.C. Official Code § 47-1205(a).

800.23 The revolving fund established, pursuant to the Act (D.C. Official Code § 6-711.01(b)(1)) provides funding for the abatement of nuisances in the District, and for other purposes. Monies in the revolving fund shall be available to cover the cost of correcting nuisances and other incidentals that may arise in enforcing any action authorized by this chapter or the Act. Any amount assessed and collected as a tax against real property pursuant to this chapter shall be deposited to the credit of the revolving fund.

899 DEFINITIONS

899.1 The provisions of §199 of chapter 1 of this title and the definitions set forth in this section shall be applicable to this chapter. In addition, the following words and terms shall have the meanings ascribed in sections 800.08 through 800.23 of this chapter:

Growing Season – the time period from May 1st through October 31st of the same calendar year.

Summary Abatement – the process by which DCRA may remove a nuisance from any premises, as described in this chapter, at the expense of the owner and before an administrative hearing challenging the notice.

Untended Premises – premises that exemplify a lack a care, maintenance, or management in violation of the provisions of this chapter.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the Register. Comments should be filed with Ms. Karen Edwards, General Counsel, Office of the General Counsel, Suite 9400, D.C Department of Consumer and Regulatory Affairs, 941 North Capitol Street, N.E., Washington, D.C. 20002. Copies of the proposed rules can be obtained from the address listed above. A copying fee of one dollar (\$1.00) will be charged for each copy of the proposed rules requested.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health (DOH), pursuant to the authority set forth in section 104 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, as amended, effective October 5, 1985, (D.C. Law 6-42; D.C. Official Code § 2-1801.04), section 4902 of the Department of Health Functions Clarification Act of 2001, effective October 3, 2001, (D.C. Law 14-28; D.C. Official Code §7-731 (2002 Supp.)), and Mayor's Order 2001-111 dated August 6, 2001, hereby gives notice of his intent to adopt amendments to Chapter 32 of Title 16 of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The purpose of the proposed rulemaking is to establish a Civil Infractions Schedule of Fines for the DOH, Environmental Health Administration's Public Swimming Pool and Spa regulations found at 22 DCMR Chapter 64. Further, these rules shall not become effective until approved by the Council of the District of Columbia, or sixty (60) days after submission, if the Council has not disapproved the regulations.

16 DCMR Chapter 3216 is amended by inserting new sections 3216.9 - 3216.11 to read as follows:

**3216 DEPARTMENT OF HEALTH- FOOD PROTECTION
DIVISION INFRACTIONS**

3216.9 Violation of any of the following provisions shall be a Class 2 infraction:

- (a) 22 DCMR §6400.2 (failure to submit construction documents for approval before constructing, installing or enlarging a swimming pool or appurtenances thereto);
- (b) 22 DCMR §6400.5 (a) (failure to obtain a license to operate a swimming pool or spa);
- (c) 22 DCMR §6400.5 (d) (failure to obtain a pesticide operator or pesticide applicator license, permit or certificate before operating a swimming pool or spa);
- (d) 22 DCMR §6400.7 (employing a person at a swimming pool or spa having a disease in a stage which is communicable or likely to become so);
- (e) 22 DCMR §6400.11 (failure to secure an unopened pool by a locked gate, fence or door);

- (f) 22 DCMR §6401.1 (failure to have a swimming pool or spa operator on duty at the facility or able to reach the facility within thirty (30) minutes);
- (g) 22 DCMR §6401.2 (failure to have a valid swimming pool or spa operator permit before serving as a swimming pool or spa operator);
- (h) 22 DCMR §6402.1 (failure to provide an adequate number of lifeguards);
- (i) 22 DCMR §6402.4 (failure to follow an approved Swimming Pool Child Safety Plan);
- (j) 22 DCMR §6402.5 (failure to follow an approved Spa Pool Child Safety Plan);
- (k) 22 DCMR §6402.11 (failure to keep bathers out of the water during the lifeguard's absence);
- (l) 22 DCMR §6403.2 (a)-(b) (failure to post required warning signs for bathers);
- (m) 22 DCMR §6408.17 (operating a swimming pool that is contaminated);
- (n) 22 DCMR §6411.3 (operating a swimming pool or spa that has not passed inspection by the Department); or
- (o) 22 DCMR §6411.6 (operating a swimming pool or spa for which the operating license has been summarily suspended).

3216.10 Violation of any of the following provisions shall be a Class 3 infraction:

- (a) 22 DCMR §6401.4 (failure to have swimming pool or spa operator permits readily accessible to the Department);
- (b) 22 DCMR §6402.13 (failure to have evidence of the on-duty lifeguard's qualifications readily accessible to the Department);
- (c) 22 DCMR §6403.1 (a)-(h) (failure to post required rules for admission to the swimming pool);
- (d) 22 DCMR §6403.3 (a)-(j) (failure to post required rules for admission to the spa);

- (e) 22 DCMR §6403.5 (failure to provide a clock or other time-keeping device for bathers using a spa);
- (f) 22 DCMR §6404.3 (failure to provide minimum bather preparation facilities);
- (g) 22 DCMR §6404.4 (failure to provide appropriate water temperature at showerheads);
- (h) 22 DCMR §6404.5 (failure to provide water for cleaning or personal hygiene from the District of Columbia public water system);
- (i) 22 DCMR §6404.6 (failure to provide soap in a non-glass dispenser unit);
- (j) 22 DCMR §6404.7 (failure to provide an unbreakable mirror over each lavatory or a supply of toilet tissue at each toilet);
- (k) 22 DCMR §6404.9 (failure to provide the required feminine hygiene products);
- (l) 22 DCMR §6404.10 (failure to provide clean and dry bathing suits and towels to bathers that are stored in a sanitary manner);
- (m) 22 DCMR §6405.1 (failure to separate eating and drinking areas from the swimming pool or spa);
- (n) 22 DCMR §6405.2 (failure to provide food and beverages in nonbreakable containers);
- (o) 22 DCMR §6405.3 (failure to provide for adequate garbage and refuse collection at a facility housing a swimming pool or spa);
- (p) 22 DCMR §6406.1 (a)-(q) (failure to meet minimum equipment and facility safety standards);
- (q) 22 DCMR § 6407.1 (a)-(h) (failure to have the required first aid and lifesaving equipment available on the premises);
- (r) 22 DCMR §6408.2 (failure to maintain adequate turnover of the swimming pool or spa waters);
- (s) 22 DCMR §6408.4 (failure to maintain adequate filtration of the swimming pool or spa waters);

- (t) 22 DCMR §6408.5 (failure to maintain adequate overflow facilities for the swimming pool or spa);
- (u) 22 DCMR §6408.6 (failure to maintain adequate swimming pool or spa water temperatures);
- (v) 22 DCMR §6408.7 (failure to maintain sufficient clarity of the swimming pool or spa waters);
- (w) 22 DCMR §6408.8 (failure to prevent the presence of sunken debris, algae dirt, filter media or filter aids in the swimming pool or spa);
- (x) 22 DCMR §6408.10 (failure to maintain sufficient acidity/alkalinity of the swimming pool or spa waters);
- (y) 22 DCMR §6408.11 (failure to use disinfectant and chemical feeders at swimming pools or spas);
- (z) 22 DCMR §6408.12 (use of products in a swimming pool or spa that are not approved by the United States EPA or the Mayor);
- (aa) 22 DCMR §6408.13 (failure to use a pesticide in a manner that is consistent with the labeling of the pesticide or consistent with the restrictions imposed on the use of the pesticide by the United States EPA or the Mayor);
- (bb) 22 DCMR §6408.15 (failure to maintain the appropriate residuals for cyanuric acid, if used);
- (cc) 22 DCMR §6408.18 (failure to close a facility for a minimum of twenty (20) minutes to allow for proper disinfection after fecal matter is introduced into the swimming pool or spa);
- (dd) 22 DCMR §6409.1 (failure to use a chemical test kit);
- (ee) 22 DCMR §6409.2 (a)-(o) (failure to record required information on operational logs);
- (ff) 22 DCMR §6409.6 (failure to report to the Director, within three (3) days of the incident, injury at a swimming pool or spa that results in death or that requires resuscitation or admission to a hospital);
- (gg) 22 DCMR §6409.7 (failure to report waterborne illness contracted at a swimming pool or spa to the Director within

twenty-four (24) hours of management's knowledge of the incident);

- (hh) 22 DCMR §6410.1 (making an unapproved direct mechanical connection between the potable water supply and the swimming pool or spa that is not protected against backflow and back-siphonage in a manner approved by the Mayor); or
- (ii) 22 DCMR §6410.3 (failure to discharge backwash or drainage waters of a swimming pool or spa into a sanitary sewer through an approved air gap or other means approved by the Mayor).

3216.11 Violation of any provision of the swimming pools and spas regulations, 22 DCMR Chapter 64, which provision or rule is not cited elsewhere in this section, shall be a Class 4 infraction.