

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in section 104 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 (“the Act”), effective October 5, 1985, (D.C. Law 6-42; D.C. Official Code § 2-1801.04) (2007 Repl.), section 4902 (b) of the Department of Health Functions Clarification Act of 2001 (Act), effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 7-731(b)) (2008 Repl.), and Mayor’s Order 2001-111, dated August 6, 2001, hereby gives notice of his intent to amend Title 16, Chapter 36 of the District of Columbia Municipal Regulations (DCMR) to repeal the current swimming pool and spa fine schedule in section 3621 and replace it with a new section 3621 schedule of fines for swimming pool and spa facilities to correspond with the new Swimming Pool and Spa Regulations that meet new federal swimming pool and spa safety legislation and current industry standards, which were published December 28, 2008 in the *D.C. Register* @ 55 DCR 012845 No. 52 Part 1.

This emergency rulemaking action is necessary to protect the public safety of persons who will be using public swimming pools and spas during this summer’s pool season.

This emergency rulemaking was executed by the Director on August 3, 2009, and became effective immediately on that date. The emergency rulemaking will expire within 120 days from the date of effectiveness or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, or whichever occurs first.

The Director also gives notice of his intent to take final rulemaking action to adopt the proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 36 of Title 16 DCMR (Civil Infractions Schedule of Fines) is amended to read as follows:

3621 SWIMMING POOL & SPA OPERATIONS INFRACTIONS**3621.1 Reserved**

3621.2 Violation of any of the following imminent health provisions shall be a Class 2 infraction:

- (a) 22 DCMR 6463.1(t) (Owning, operating, or managing a public swimming pool or spa without a valid license issued by the Department in violation of section 6445.1);
- (b) 22 DCMR 6463.1(u) (Failure of licensee or manager to employ an individual to serve as swimming pool and spa operator who possesses a valid swimming pool and spa operator’s permit issued by the Department in violation of section 6445.2);

- (c) 22 DCMR 6484.1 (Operating a swimming pool or spa facility with a suspended license);
- (d) 22 DCMR 6463.1(p) (Constructing, installing, renovating or retrofitting a swimming pool or spa without written approved from the Department of Health and the District of Columbia Department of Consumer and Regulatory Affairs in violation of 6445.3); or
- (e) 22 DCMR 6439.9 (Operating an outdoor swimming pool or spa pool with Safety Covers that have not been retrofitted to comply with the Swimming pool and spa drain cover entrapment protection standards of the ASME /ANSI A112.19.8 performance standard as specified in section 6420.6).

3621.3 Violation of any of the following imminent health provisions shall be a Class 3 infraction:

- (a) 22 DCMR 6463.1(t) (Operating a public swimming pool or spa with an expired license in violation of section 6445.1);
- (b) 22 DCMR 6463.1(a) (Operating a swimming pool or spa facility when the disinfectant level is below the minimum or above the maximum in violation of section 6416.2(b));
- (c) 22 DCMR 6463.1(b) (Operating a swimming pool or spa facility with improper residuals; or with human or environmental contamination that is not properly treated or disinfected in violation of section 6418);
- (d) 22 DCMR 6463.1(c) (Operating a swimming pool or spa facility when the pH of the pool water is below 7.2 or above 7.8 in violation of section 6416.2(a));
- (e) 22 DCMR 6463.1(d) (Operating a swimming pool or spa facility when the clarity of the pool water is such that the main drain grate is not readily visible from the pool deck in violation of section 6414.1);
- (f) 22 DCMR 6463.1(e) (Operating a swimming pool or spa facility when the recirculation system or disinfection feeding equipment is missing, malfunctioning, or not functioning);
- (g) 22 DCMR 6463.1(f) (Operating a swimming pool or spa facility when a main drain grate is missing, unsecured, improperly secured or damaged);
- (h) 22 DCMR 6463.1(g) (Operating a swimming pool or spa facility when direct suction exists on the main drain in violation of 6420.6 or the corrective actions are not completed by the required dates in violation of section 6420.5);

- (i) 22 DCMR 6463.1(h) (Operating a swimming pool or spa facility with a fire on the premise);
- (j) 22 DCMR 6463.1(i) (Operating a swimming pool or spa facility with a flood on the premises);
- (k) 22 DCMR 6463.1(j) (Operating a swimming pool or spa facility with an extended interruption of electrical or water service);
- (l) 22 DCMR 6463.1(k) (Operating a swimming pool or spa facility with a sewage backup);
- (m) 22 DCMR 6463.1(l) (Operating a swimming pool or spa facility with a misuse of chemicals);
- (n) 22 DCMR 6463.1(m) (Operating a swimming pool or spa facility with the onset of a confirmed waterborne illness);
- (o) 22 DCMR 6463.1(n) (Operating a swimming pool or spa facility with a gross unsanitary occurrence or condition);
- (p) 22 DCMR 6463.1(o) (Failing to eliminate a public nuisance dangerous to health);
- (q) 22 DCMR 6463.1(p) (Operating a swimming pool or spa facility with any modification resulting in the operation of a swimming pool or spa in a manner unsanitary or dangerous to public health or safety);
- (r) 22 DCMR 6463.1(q) (Failing to allow the Department access to a swimming pool or spa facility in violation of section 6455);
- (s) 22 DCMR 6463.1(r) (Failing to provide copies of the swimming pool or spa facility's Child Safety Plan to the Department for review and approval in violation of section 6411.1);
- (t) 22 DCMR 6463.1(s) (Operating a swimming pool or spa facility with a condition that may endanger the health and safety of an individual using a swimming pool or spa, including but not limited to, a missing or not properly secured drain cover or other suction outlet entrapment hazard);
- (u) 22 DCMR 6463.1(v) (Operating a public swimming pool or spa without a lifeguard in violation of section 6410);
- (v) 22 DCMR 6463.1(w) (Operating a public swimming pool or spa with a lifeguard who does not possess a current American Red Cross, YMCA, or equivalent nationally recognized Certifications in Lifeguarding, Adult/ Child/ Infant CPR, and First Aid); or

- (w) 22 DCMR 6463.1(x) (Operating a swimming pool or spa facility with any condition which endangers the health, safety, or welfare of persons using the pool, including but not limited to):
 - (1) A drowning hazard;
 - (2) Broken glass, sharp edged or broken tile or metal, or other abrasion hazards;
 - (3) Fecal accidents;
 - (4) Electrical violations; or
 - (5) Severe algae growth.
- (x) 22 DCMR 6412 or 6413 (Licensee or manager's use pool water that is not potable water from the District of Columbia public water system).

3621.4 Violation of any of the following provisions of 22 DCMR Section 6403 through 6423 shall be a Class 3 infraction:

- (a) 22 DCMR 6403.1 through 6403.3 (Failure of licensee or manager to post required "Swimming Pool Admission Rules");
- (b) 22 DCMR 6463.2 (Failure of licensee or manager to post required "Pool Closed" sign);
- (c) 22 DCMR 6403.4 (a) - (i) (Failure of licensee, manager, swimming pool and spa operator, lifeguard, or swimming instructor to enforce "Pool Rules");
- (d) 22 DCMR 6403.5 and 6403.6 (Failure of licensee or manager to post required "Warning Signs");
- (e) 22 DCMR 6404.1 and 6404.2 (Failure of licensee or manager to post required "Spa Pool Admission Rules");
- (f) 22 DCMR 6404.3 (Licensee, manager, swimming pool and spa operator, or lifeguard's failure to provide a clock or other time-keeping device which is visible to bathers using the spa);
- (g) 22 DCMR 6405.1 (Licensee or manager's employment of an individual to service the cleanliness, water quality and chemical balance of a public pool who is not certified);
- (h) 22 DCMR 6405.2 or 6405.7 (Licensee or manager's employment of a swimming pool and spa operator whose certification is not recognized by the Department);

- (i) 22 DCMR 6406.1 (Failure of licensee or manager to have a certified swimming pool or spa operator on duty during all hours of operation);
- (j) 22 DCMR 6406.2 (Licensee or manager's employment of a swimming pool or spa operator who is not knowledgeable in the areas specified in section 6405.3);
- (k) 22 DCMR 6406.3 (Licensee or manager's employment of a swimming pool or spa operator who does not have a valid permit issued by the Department);
- (l) 22 DCMR 6407.1 (Licensee or manager's employment of a lifeguard or swimming instructor who is not certified in lifeguarding or swimming instruction by the American Red Cross, YMCA, or other equivalent nationally recognized aquatic training organization);
- (m) 22 DCMR 6407.2 (Licensee or manager's employment of a lifeguard or swimming instructor who does not possess current certificates in First Aid and in Adult, child and infant cardiopulmonary resuscitation through the American Red Cross, the American Heart Association, the National Safety Council, or the American Academy of Orthopedic Surgeons);
- (n) 22 DCMR 6408.3 (Failure to ensure that all bathers are out of the water and remain out of the water during a lifeguard's absence);
- (o) 22 DCMR 6414.2 (Operating a swimming pool or spa pool with heaters that exceed the maximum water temperature of one hundred and four degrees Fahrenheit (104 ° F) (forty degrees Centigrade (40 ° C)));
- (p) 22 DCMR § 6415.1 or 6418.1 (Operating a swimming pool or spa pool with water that is contaminated);
- (q) 22 DCMR § 6410.1 through 6410.5 (Licensee or manager's failure to provide an adequate number of lifeguards);
- (r) 22 DCMR § 6411.1 (Licensee or manager's failure to follow an approved Child Safety Plan);
- (s) 22 DCMR 6417.1 (Licensee, manager, or swimming pool and spa operator's failure to have chemical required test kits on the premises);
- (t) 22 DCMR 6417.2 through 6417.4 (Licensee, manager, or swimming pool and spa operator's failure to use a chemical test kit as required);
- (u) 22 DCMR 6421.1 (Operating a swimming pool or spa with an unapproved direct mechanical connection between the potable water supply and the swimming pool or spa, chlorinating equipment, or the system of piping for the swimming pool or spa that is not protected against backflow and back-siphonage);

- (v) 22 DCMR 6421.3 (Licensee, manager, or swimming pool and spa operator's 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 Department of Consumer and Regulatory Affairs);
- (w) 22 DCMR 6422.1 (a) through (n) (Licensee, manager, swimming pool and spa operator, or lifeguard's failure to record daily water quality logs as required);
- (x) 22 DCMR 6422.2 through 6422.6 (Licensee, manager, swimming pool and spa operator, or lifeguard's failure to record daily safety logs as required);
- (y) 22 DCMR 6422.7 (Licensee, manager, swimming pool and spa operator, or lifeguard's failure to comply with all recommendations found in the Centers of Disease Control's (CDC) "Fecal accident response recommendations for Aquatics staff");
- (z) 22 DCMR 6423.1 (Licensee, manager, swimming pool and spa operator, lifeguard, or swimming instructor's failure to report any death, serious injury, or injury that requires resuscitation or admission to a hospital occurring at the swimming pool or spa to the Department within twenty-four hours (24 hrs.) of the incident);
- (aa) 22 DCMR 6423.2 ((Licensee, manager, swimming pool and spa operator, lifeguard, or swimming instructor's failure to report a complaint of illness attributed by a bather to use of a swimming pool or spa to the Department within twenty-four hours (24 hrs.) of the incident);

3621.5 Violation of any of the following provisions of 22 DCMR Section 6427 through 6441 shall be a Class 3 infraction:

- (a) 22 DCMR 6427.3. (Licensee, manager, swimming pool and spa operator, or lifeguard's improper storage of chemical emitting corrosive fumes or other items that block the room's entrance);
- (b) 22 DCMR §§ 6429.1 through 6429.6 (Failure to have the required first aid and lifesaving equipment available on the premises);
- (c) 22 DCMR 6436.1 (Licensee or manager's failure to provide minimum shower facilities);
- (d) 22 DCMR 6436.2 (Licensee or manager's failure to provide appropriate water at shower heads);
- (e) 22 DCMR 6437.4 (Licensee, manager, or swimming pool and spa operator failure to use a disinfectant or chemical feeder to maintain appropriate disinfectant residuals);

- (f) 22 DCMR 6437.4 (Licensee, manager, or swimming pool and spa operator use of a pesticide in a manner that is inconsistent with the labeling of the pesticide or inconsistent with the restrictions imposed on the use of the pesticide by the United States Environmental Protection Agency or the Department);
- (g) 22 DCMR 6437.5 (Licensee, manager, or swimming pool and spa operator improper use of chemical products);
- (h) 22 DCMR 6437.6 (Licensee, manager, or swimming pool and spa operator use of disinfecting products other than chlorine or bromine that has not been approved by the Department);
- (i) 22 DCMR 6438.1 through 6438.5 (Licensee, manager, or swimming pool and spa operator failure to label and store chemicals in a cool, dry, and well ventilated area under a roof that is inaccessible to the public);
- (j) 22 DCMR 6439.1 through 6439.7 (Operating an outdoor swimming pool or spa pool without the required effective barriers and/ or fences); or
- (k) 22 DCMR 6440.1 or 6441.1 (Failing to minimize the presence of insects, rodents, or other pests on the premises);

3621.6 Violation of any provision of the District's Swimming Pool and Spa Regulations (22 DCMR, Chapter 64), which is not cited elsewhere in this section shall be a Class 4 infraction.

All persons wishing to comment on the proposed rules should submit written comments no later than thirty (30) days after publication of this notice in the *D.C. Register*, to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., Room 4122, Washington, D.C. 20002. Copies of the proposed rules may be obtained, at cost, at the same address during the hours of 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.