

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in section 4902 and 4908 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(a)(12) and 7-737 (2009 Supp.), and the Mayor’s Order 2006-10 dated January 27, 2006, hereby gives notice of the adoption of a new Subtitle D, Title 25 of the *District of Columbia Municipal Regulations*.

The proposed rules will provide the Department of Health with enhanced enforcement authority in protecting the public health, safety, and welfare by ensuring compliance with current industry standards, and distinguishing legitimate and respectable massage establishments and health spa facilities from illegal ones.

The Director also give notice of 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*. The proposed rules shall not become effective until a Notice of Final Rulemaking is published in the *D.C. Register*.

Title 25, Subtitle D of the DCMR reads as follows:

SUBTITLE D MASSAGE ESTABLISHMENT AND HEALTH SPA FACILITY REGULATIONS

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CHAPTER 1 TITLE, INTENT, SCOPE

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| 100 | TITLE — MASSAGE ESTABLISHMENT AND HEALTH SPA FACILITY REGULATIONS |
| 100.1 | These provisions shall be known as the Massage Establishment and Health Spa Facility Regulations, hereinafter referred to as “these regulations”. |
| 101 | INTENT — SAFETY |
| 101.1 | The purpose of these regulations is to protect the public health and safety by preventing and controlling the spread of communicable diseases and to protect the environment by promoting and regulating the safety and sanitary conditions of massage establishments and health spa facilities. |
| 101.2 | These regulations establish definitions; prescribe minimum standards for the design, construction, operation, and maintenance of massage establishments and health spa facilities; set standards for equipment and facilities; set standards for personnel, and sanitary operations; establish recordkeeping and reporting requirements; establish |

prohibited conduct within massage establishments and health spa facilities; provide for the issuance of licenses and certifications; establish massage establishment and health spa facility licensing fees; and provide for enforcement through inspections, suspension and revocation of licenses and certifications, and the issuance of fines and penalties.

101.3 These regulations do not apply to:

- (a) Massage therapy practiced at athletic departments of any accredited school, college, university, or seminary or in connection with the conduct of professional athletics;
- (b) Licensed massage therapists employed by an accredited high school, junior college, or college while engaging in the course and scope of their employment;
- (c) Massage therapy provided in facilities connected with hospitals, surgical facilities, or medical doctor's offices licensed pursuant to the Health Occupations Revision Act of 1985 Amendment Act of 1994, effective March 23, 1995, (D.C. Law 10-247; D.C. Official Code § 3-1205.01) (2007 Repl.); or persons under the supervision of a person licensed to practice medicine or surgery pursuant to the Health Occupations Revision Act of 1985 Amendment Act of 1994, effective March 23, 1995, (D.C. Law 10-247; D.C. Official Code § 3-1205.01) (2007 Repl.).
- (d) Massage therapy provided in hospitals, clinics, nursing and convalescent homes and other similar institutions where these services are dedicated to medical or nursing practices licensed pursuant to the Health Occupations Revision Act of 1985 Amendment Act of 1994, effective March 23, 1995, (DC Law 10-247; D.C. Official Code § 3-1205.01) (2007 Repl.);
- (e) Health spas in bona fide nonprofit organizations or other licensed organizations whose limited offering of health spa services is incidental to the primary and lawful purpose of business; private clubs owned and lawfully operated by its members; organizations primarily operated for the purpose of teaching a particular form of self-defense such as judo or karate; any facility owned or operated by the United States or District governments; or any nonprofit public or private school, college, or university;
- (f) Trainers for any bona fide amateur, semiprofessional or professional athlete, or athletic team while engaging in the course and scope of their employment; or
- (g) Student clinic programs offering massage therapy on the premises of a recognized school of massage.

101.4 Certain provisions of these regulations are identified as critical. Critical provisions are those provisions where noncompliance serves to spread communicable diseases

or creates environmental health hazards. A critical item is denoted with an asterisk (*).

- 101.5 Certain provisions of these regulations are identified as noncritical. Noncritical provisions are those provisions where noncompliance is less likely to spread communicable diseases or create environmental health hazards. A part that is denoted in these regulations without an asterisk (*) after the head note, is a noncritical item. However, a critical item may have a provision within it that is designated as a noncritical item with a superscripted letter “N” following the provision.

102 COMPLIANCE WITH FEDERAL AND DISTRICT LAWS

- 102.1 The Department shall use these regulations to promote the safeguarding of public health and ensure that massage establishments and health spa facilities are safe and in compliance with Federal and District laws and regulations. The most current versions of the following District and Federal regulations are hereby incorporated by reference:

- (a) The District’s Construction Codes of 2008, consisting of the following International Code Council (ICC):
- (i) International Building Code (2006 edition) or most recent edition;
 - (ii) International Mechanical Code (2006 edition) or most recent edition;
 - (iii) International Plumbing Code (2006 edition) or most recent edition;
 - (iv) International Fire Code (2006 edition) or most recent edition;
 - (v) International Existing Building Code (2006 edition) or most recent edition;
 - (vi) The NFPA National Electrical Code (2005 edition) or most recent edition;
 - (vii) The District’s Construction Code Supplement of 2008 or most recent edition; and
 - (viii) Title 12 of the District of Columbia Municipal Regulations.
- (b) 29 CFR § 1910.1030 – Part 1910 – Occupational Safety and Health Standard, Subpart Z – Toxic and Hazardous Substances.

- 102.2 In enforcing the provisions of these regulations, the Department shall assess the physical structure; operating systems, design, and operation and maintenance of equipment, furniture, devices, and fixtures of existing massage establishments and health spa facilities in use before the effective date of these regulations based on the following considerations:

- (a) Whether the facilities equipment, furniture, devices, or fixtures are in good repair and capable of being maintained in a sanitary condition; and
- (b) The existence of a documented agreement with the licensee that the facility's operating systems, or equipment, devices, fixtures, linens, furnishings, garments, or other supplies will be replaced as specified in section 1210.6.

CHAPTER 2 SUPERVISION AND TRAINING

200 LICENSEE, MANAGER, AND MASSAGE THERAPISTS – QUALIFICATION, ASSIGNMENT, TRAINING, & POSTING*

- 200.1 The licensee or manager of massage establishment or health spa facility shall ensure that massage therapists working in their establishments are licensed in accordance with the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.1) (2007 Repl..).
- 200.2 The licensee shall ensure that a manager of a massage establishment or health spa facility is on the premises during all hours of operations and is wearing a plainly visible name tag to identify him or her as a manager.
- 200.3 The licensee or manager of a massage establishment or health spa facility shall ensure that massage therapists are on the premises during all hours of operations.
- 200.4 The licensee or manager of massage establishment or health spa facility shall post a list of available services and the costs of such services at the front of the establishment that is visible upon entering the premises.
- 200.5 The services shall be described in readily understandable language and all letters and numbers shall be in capital letters not less than one-half inch in height.
- 200.6 No licensee or manager shall permit and no massage therapist shall offer to perform services other than those posted, or charge a price in excess of the costs posted for such services.
- 200.7 The licensee or manager of massage establishment or health spa facility shall ensure that all equipment used in a massage establishment or health spa facility is clean and in good repair as specified in section 402.
- 200.8 The licensee shall provide the Department with the names of all managerial personnel and massage therapists:
 - (a) Prior to operating or on the effective date of these regulations, whichever occurs later;
 - (b) Within five (5) business days of a change in their employment status; and

- (c) Maintain on-site at all times the following records that shall be readily available for review by the Department:
- (1) Personnel files, including proof of completion of all training classes and certifications on all managers, massage therapists, and ancillary employees;
 - (2) Contact information on each corporate officer, director, and stockholder as specified in section 1204.1(b)(1);
 - (3) Contact information on each partner as specified in section 1204.1(b)(2); and
 - (4) Contact information on registered agent as specified in section 1204.1(c).

- 200.9 All ancillary employees of a massage establishment or health spa facility, except the massage therapists, shall be trained to the extent necessary to safely complete their job duties within the massage establishment or health spa facility.
- 200.10 All employees that are directly involved in massage therapy or maintenance of the massage establishment or health spa facility shall be trained to recognize obvious health hazards and shall comply with section 200.11. Any employee encountering a health hazard shall immediately report it to the manager.
- 200.11 All employees directly involved in responding to biohazard events shall be trained in biohazard issues and handling in accordance with Occupational Safety and Health Administration standards in accordance with 29 CFR § 1910.1030 – Part 1910 – Occupational Safety and Health Standard, Subpart Z – Toxic and Hazardous Substances.
- 200.12 Copies of the following documents shall be conspicuously posted in a massage establishment or health spa facility:
- (a) Certificate of Occupancy issued by the Department of Consumer & Regulatory Affairs;
 - (b) Massage Establishment or Health Spa Facility License;
 - (c) Massage Therapists' Licenses;
 - (d) Current Inspection Report;
 - (e) District-Issued Massage Establishment or Health Spa Facility Manager Identification Cards; and
 - (f) District-issued Massage Therapist Health Identification Cards.

200.13 Documents specified in sections 200.12(e) and ((f) shall be removed when the manager or massage therapist is no longer employed by the massage establishment or health spa facility.

201 LICENSE AND DISTRICT-ISSUED IDENTIFICATION CARD REQUIREMENTS – LICENSEES, MANAGERS, AND MASSAGE THERAPISTS

201.1 All licensees or managers of massage establishments or health spa facilities shall obtain a District-issued Massage Establishment or Health Spa Facility Manager Identification Card, issued by the Department, which shall be renewed annually.

201.2 All massage therapists shall obtain a District-issued Massage Therapist Health Identification Card, issued by the Department, which shall be renewed annually.

202 DUTIES AND RESPONSIBILITIES – MASSAGE THERAPISTS, BASIC KNOWLEDGE

202.1 Massage therapists shall have basic knowledge of:

- (a) Anatomy, physiology, hygiene and manual and mechanical massage therapy;
- (b) Proper procedures for sanitizing equipment;
- (c) Emergency procedures to be followed in case of an actual or alleged injury;
- (d) Recordkeeping requirements and maintenance of records; and
- (e) Communicable diseases to protect the customers of the massage therapist and the massage therapist from the transmission of such a disease while engaging in massage therapy.

203 DUTIES AND RESPONSIBILITIES – MASSAGE THERAPIST, MASSAGE THERAPY PROCESS

203.1 Massage therapists shall:

- (a) Provide only those services that they have the training and practical experience to perform, that are designed to benefit the health and well-being of the client;
- (b) Deliver treatment that ensures each customer’s safety, comfort, and privacy; and
- (c) Inform customers of the scope and limitations of massage therapy as specified in section 204.

204 DUTIES AND RESPONSIBILITIES – MASSAGE THERAPIST, CUSTOMER ASSESSMENT, AND INFORMED CONSENT

- 204.1 Before providing treatment, massage therapists shall:
- (a) Inquire as to the health and current health status of each customer to determine indications and contraindications for the application of massage therapy;
 - (b) Assess the needs and expectations of the customer and designate a treatment;
 - (c) Obtain the written consent from the customer or parent or guardian of a minor after:
 - (1) Informing the customer as to the nature and purpose of the service to be provided; and
 - (2) The customer demonstrating an understanding of the terms under which the massage therapy is being provided and voluntarily agrees to receive such treatment by signing a Consent Form; and
 - (d) Respect the customer's right to refuse, modify, or terminate treatment regardless of prior consent.

205 DUTIES AND RESPONSIBILITIES – MASSAGE THERAPIST, DRAPING AND DONNING GARMENTS

- 205.1 Before beginning a massage therapy session, each massage therapist shall explain to customers the purpose for wearing garments over and /or draping their specified anatomical areas, which include the human genitals, pubic region, anus, or perineum of any person, or the vulva or breast of a female, except as specified in section 206.4(c).
- 205.2 During the explanation specified in section 205.1, the massage therapist, may clarify, if necessary, what therapies and acts are prohibited and what the customer should expect during the massage therapy session.
- 205.3 The massage therapist shall demonstrate, while the customer is clothed, the expected garment donning and/ or draping technique.
- 205.4 Once the massage therapist is confident that the customer understands the reasons and methods for draping, the customer shall be provided with clean and sanitized garments and / or drapes and be given privacy to undress and perform the donning and draping as specified in section 205.6.
- 205.5 The massage therapist shall notify the customer when the massage therapy session is completed and provide the customer with the following instructions:
- (a) How to don a robe and the location of the showers;
 - (b) Where to place the used drapes and towels; and

(c) What other amenities are available to the customer such as the sauna.

205.6 The massage therapist shall exit the therapy room to allow the customer privacy to don garments or their clothing, after complying with sections 205.4 and 205.5.

206 DUTIES AND RESPONSIBILITIES – MASSAGE THERAPIST, HYGIENIC PRACTICES DURING MASSAGE THERAPY

206.1 All massage therapists shall employ good hygienic practices while on duty in a massage establishment or health spa facility.

206.2 Massage therapists shall wash their hands thoroughly before and after performing each massage.

206.3 No massage therapist shall administer a massage or give treatment if they know or should know that they have any disease capable of being transmitted to another individual.

206.4 The massage therapist shall:

- (a) Cleanse the exposed body part for applying treatment (such as hands, elbows, feet) before and after each treatment using a lavatory with hot water, followed by a chemical sanitizer skin product, if desired;
- (b) Maintain a barrier of unbroken skin on the exposed body part used for applying therapy by using a barrier such as gloves, a finger cot, or cover the area if there is broken skin on the customer; and
- (c) Cover areas of the customer not being treated at the time using sheets, towels, or draping to ensure that the specified anatomical areas remain covered for the duration of the massage therapy. With voluntary and informed consent of the customer, the massage therapist may expose the gluteal muscles, one side at a time, for treatment to the structures in those areas. Limited exposure of the female breast areas to access the chest wall muscular structures may also take place as long as the breast areola area remains covered.

206.5 A massage therapist, or any person who works in a massage establishment or health spa facility and who is exposed as part of his employment to any bloodborne pathogens or bodily fluids, shall practice universal precautions in accordance with 29 CFR § 1910.1030(d) – Bloodborne pathogens.

206.6 Massage therapists with an open wound, cut, sore, burn, or other skin injury capable of coming into contact with a client's skin shall not practice massage therapy without covering the wound, cut, sore, burn, or skin injury with a suitable physical barrier such as a finger cot or a latex glove in accordance with chapter 4.

206.7 If a massage therapist has reason to suspect that an employee who assists in massage therapy sessions may have a communicable disease, the massage therapist

shall require the employee be examined by a licensed medical professional prior to returning to work in accordance with chapter 4.

206.8 If a massage therapist has reason to suspect that a customer may have a communicable disease, skin diseases or other conditions posing public health concerns, the massage therapist shall:

- (a) Deny the customer service and recommend the customer be examined by a licensed health care provider; or
- (b) Cease a massage therapy session that is in-process and recommend the customer be examined by a licensed health care provider.

206.9 Massage therapists shall ensure that:

- (a) All portable saunas, showers, tubs, basins, massage or steam tables, combs, brushes, shower caps and any other equipment used in the massage establishment or health spa facility are clean and rendered free from harmful organisms by the application of a bactericidal agent;
- (b) Any equipment that comes in contact with a client of the massage therapist is cleaned with soap or detergent and hot water and is sanitized before the equipment is used on another customer;
- (c) All equipment, furniture and fixtures, including but not limited to tables and chairs used for massage therapy are clean and well-maintained;
- (d) All electrical equipment used for the care of a customer is clean and well-maintained and is listed to applicable standards and requirements by Underwriters Laboratories, Inc., or approved by another nationally recognized testing laboratory; and
- (e) All hydrotherapy equipment is cleaned after each use, is well-maintained and is only used in the manner prescribed by the manufacturer of the equipment.

207 DUTIES AND RESPONSIBILITIES – MASSAGE THERAPIST AND EMPLOYEE CLOTHING

207.1 Employees, including massage therapists shall wear outer garments that are fully opaque, and that do not expose their genitals, pubic area, buttocks, chest, or breasts.

207.2 The outer garments of each person engaged in massage therapy, handling bedding, linens, garments, or food in a massage establishment or health spa facility shall be kept visibly clean.

207.3 Employee clothing that has become soiled or contaminated with any bodily fluids during work shall be changed prior to returning to duty.

- 207.4 Soiled employee clothing shall be stored in a designated area away from clean clothing and other laundered items, as specified in sections 503, 504, and 505.

CHAPTER 3 POLICIES AND PROCEDURES

300 OPERATING PROCEDURES – MANUAL, CONTENT

- 300.1 The Department shall review the operating procedures and shall determine if the procedures are adequate. If the procedures are adequate, the Department shall approve the operating procedures, and the licensee shall adhere to the operating procedures in all respects.
- 300.2 The licensee shall maintain a procedure manual at the massage establishment or health spa facility which shall be available to the managers and massage therapists on duty at all times and the Department during inspections.
- 300.3 Each massage establishment or health spa facility shall maintain a list of emergency contact numbers appropriate for the community in which it is located. The list shall be easily accessible and shall include, but is not limited to, contact numbers for:
- (a) The nearest hospital;
 - (b) The nearest fire department; and
 - (c) Emergency 911 service.
- 300.4 At least one (1) manager, who is not on duty as a massage therapist, is required on-site at all times when the massage establishment or health spa facility is in operation.

301 RECORDKEEPING REQUIREMENTS – GENERAL PROVISIONS

- 301.1 The licensee shall maintain all records at the facility for at least three (3) years or longer if required by any other applicable District laws or regulations. The records shall be readily available for review by the Department.
- 301.2 The licensee shall maintain documentation of the following:
- (a) Each session of massage therapy, when practicable, including:
 - (1) The date of service;
 - (2) Service provided;
 - (3) Needs assessment,
 - (4) Plan of care,
 - (5) Observations made, and

- (6) Actions taken by the massage therapist.
 - (b) If the customer was referred by a medical professional, records relating to the concerns of the medical professional, in case they want to conduct any follow-up of the massage therapy provided.
 - (c) Confidentiality of customer information, unless the information is required to be lawfully disclosed to the Department;
 - (d) Consumer consent forms as specified in section 204.1(c); or
 - (e) Documentation of parental consent for massage therapy, if the customer is a minor.
- 301.3 Records which are maintained by the licensee on computer systems shall be regularly copied, at least monthly, and updated on storage media other than the hard drive of the computer to ensure compliance with these regulations.
- 301.4 An electronic record shall be retrievable as a printed copy.

302 RECORDKEEPING REQUIREMENTS – MASSAGE SUPPLEMENTARY AIDS

- 302.1 Records shall be kept describing the vendors and sources of all massage supplementary aids used on customers within a massage establishment or health spa facility.
- 302.2 Product records shall be maintained and shall be available on the premises to the licensee, manager or massage therapist at the time of any inspection by the Department.

303 RECORDKEEPING AND REPORTING REQUIREMENTS – INJURY

- 303.1 The licensee shall submit to the Department a written report of actual or alleged injury from use of the licensee's equipment, devices, fixtures, linens, furnishings, garments, or other supplies within five (5) business days after notification of actual or alleged injury.
- 303.2 The report shall include the following information:
- (a) Name, address, and telephone number of the affected individual;
 - (b) Massage establishment or health spa facility's name, location, telephone number, license number; and name of the manager and massage therapist on duty;
 - (c) Identification of the specific equipment, devices, fixtures, linens, furnishings, garments, or other supplies involved;

- (d) Nature of the actual or alleged injury, including the date and any other information relevant to the actual or alleged injury;
 - (e) Name of attending physician, if applicable, medical attention sought and treatment;
 - (f) Copy of the individual's medical referral and massage therapy records;
 - (g) Steps taken to prevent recurrence of future injuries; and
 - (h) All information requested on the Department's Report of Injury Form.
- 303.3 The licensee shall maintain all records or reports pertaining to actual or alleged injury at a massage establishment or health spa facility for review for a period of three (3) years from the date of actual or alleged injury.

CHAPTER 4 EMPLOYEE HEALTH

400 DISEASE OR MEDICAL CONDITION – RESPONSIBILITY OF MASSAGE THERAPISTS AND ANCILLARY EMPLOYEES TO REPORT SYMPTOMS AND DIAGNOSIS*

- 400.1 The licensee shall require massage therapists and ancillary employees to report to their managers, in accordance with this section, if diagnosed by a medical professional of:
- (a) Having a communicable disease;
 - (b) Are in a carrier state of a communicable disease;
 - (c) Having a boil or other infected wound;
 - (d) Has an acute respiratory infection; or
 - (e) Has a *Staphylococcus aureus* (or "staph") bacterial infection.
- 400.3 A massage therapist and ancillary employee shall report to his or her manager when he or she has any of the following symptoms:
- (a) Vomiting;
 - (b) Diarrhea;
 - (c) Sore throat with fever; or
 - (d) A lesion containing pus, such as a boil or infected wound that is open or draining and is:

- (1) On the hands or wrists, unless an impermeable cover such as a finger cot or stall protects the lesion and a single-use glove is worn over the impermeable cover;
- (2) On exposed portions of the arms, unless the lesion is protected by an impermeable cover; or
- (3) On other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage.

401 DISEASE OR MEDICAL CONDITION – RESPONSIBILITY OF MANAGER TO PROHIBIT AN EMPLOYEE WITH A SPECIFIC ILLNESS FROM BEING EMPLOYED AS A MASSAGE THERAPIST OR ANCILLARY EMPLOYEE*

401.1 A manager shall ensure that a employee who exhibits or reports a symptom, or reports a diagnosed illness as specified in section 400.3, is prohibited from being employed as a massage therapist or ancillary employee until the employee satisfies the requirements for reinstatement associated with specific symptoms or diagnosed illnesses specified in section 406.

402 DISEASE OR MEDICAL CONDITION – RESPONSIBILITY OF MANAGER TO EXCLUDE OR RESTRICT ILL MASSAGE THERAPISTS OR ANCILLARY EMPLOYEES*

402.1 A manager shall ensure that a massage therapist or ancillary employee who exhibits or reports a symptom or who reports a diagnosed illness as specified in section 400.3 is:

- (a) Excluded as specified in sections 404, except as provided in section 406; or
- (b) Restricted as specified in section 405, except as provided in section 406.

403 DISEASE OR MEDICAL CONDITION – RESPONSIBILITY OF MASSAGE THERAPIST AND ANCILLARY EMPLOYEE TO COMPLY WITH EXCLUSIONS OR RESTRICTIONS*

403.1 A massage therapist and ancillary employee shall comply with:

- (a) An exclusion imposed pursuant to section 404, unless reinstated pursuant to section 406; or
- (b) A restriction imposed pursuant to section 405, unless reinstated pursuant to section 405.

404 DISEASE OR MEDICAL CONDITION – CONDITIONS REQUIRING EXCLUSION OF ILL MASSAGE THERAPISTS OR ANCILLARY EMPLOYEES*

404.1 A manager shall exclude a massage therapist or ancillary employee from a massage establishment or health spa facility if massage therapist or ancillary employee is

(a) Symptomatic with vomiting or diarrhea; or

(b) Symptomatic with vomiting or diarrhea and diagnosed with an infection from a *Norovirus*.

405 DISEASE OR MEDICAL CONDITION – CONDITIONS REQUIRING RESTRICTION OF ILL MASSAGE THERAPISTS OR ANCILLARY EMPLOYEES*

405.1 If a massage therapist or ancillary employee is diagnosed with an infection from a *Norovirus*, and is symptomatic, a manager shall restrict the massage therapist or ancillary employee.

405.2 If a massage therapist or ancillary employee is ill with symptoms of acute onset of sore throat with fever, a manager shall restrict the massage therapist or ancillary employee.

405.3 A manager shall restrict a massage therapist or ancillary employee who is infected with a skin lesion containing pus, such as a boil or infected wound that is open or draining and not properly covered as specified in section 400.3(d).

406 DISEASE OR MEDICAL CONDITION RESPONSIBILITY OF MANAGER TO REMOVE, ADJUST, OR RETAIN EXCLUSIONS AND RESTRICTIONS OF ILL MASSAGE THERAPISTS OR ANCILLARY EMPLOYEES*

406.1 A manager may reinstate a massage therapist or ancillary employee who was excluded under section 404.1(a) for being symptomatic with vomiting or diarrhea if the massage therapist or ancillary employee:

(a) Is asymptomatic for at least twenty-four (24) hours; or

(b) Provides his or her supervisor with written medical documentation from a licensed physician that states the symptom is from a noninfectious condition.

406.2 If a massage therapist or ancillary employee was diagnosed with an infection from a *Norovirus* and excluded under section 404.1(b), a manager may restrict the massage therapist or ancillary employee after he or she has been asymptomatic for at least twenty-four (24) hours, and may reinstate the massage therapist or ancillary employee after the conditions for reinstatement specified in sections 406.3 have been met.

406.3 A manager may reinstate a massage therapist or ancillary employee who was excluded under section 404.1(b) or restricted under section 405.1 or 406.2 for a *Norovirus* if the manager obtains approval from the Department and one (1) of the following conditions is met:

- (a) The excluded or restricted employee provides his or her manager with written medical documentation from a licensed physician that states the massage therapist or ancillary employee is free of Norovirus infection;
- (b) The massage therapist or ancillary employee was restricted after symptoms of vomiting or diarrhea resolved, and more than forty-eight (48) hours have passed since the massage therapist or ancillary employee became asymptomatic; or
- (c) The massage therapist or ancillary employee was restricted and did not develop symptoms and more than forty-eight (48) hours have passed since the massage therapist or ancillary employee was diagnosed.

406.4 A manager may reinstate a massage therapist or ancillary employee who was restricted under section 405.2 for sore throat with fever if the massage therapist or ancillary employee provides his or her manager with written medical documentation from a licensed physician that states the massage therapist or ancillary employee meets one (1) of the following conditions:

- (a) Has received antibiotic therapy for *Streptococcus pyogenes* infection for more than twenty-four (24) hours;
- (b) Has at least one negative throat specimen culture for *Streptococcus pyogenes* infection; or
- (c) Is otherwise determined by a licensed physician to be free of a *Streptococcus pyogenes* infection.

406.4 A manager may reinstate a massage therapist or ancillary employee who was restricted as specified in section 405.3 if the skin, infected wound, cut, or pustular boil is properly covered with one (1) of the following:

- (a) An impermeable cover such as a finger cot or stall and a single-use glove over the impermeable cover if the infected wound or pustular boil is on the hand, finger, or wrist;
- (b) An impermeable cover on the arm if the infected wound or pustular boil is on the arm; or
- (c) A dry, durable, tight-fitting bandage if the infected wound or pustular boil is on another part of the body.

CHAPTER 5 CONSTRUCTION, MAINTENANCE, SANITATION, AND PREVENTING CONTAMINATION

500 CONSTRUCTION MATERIAL – EQUIPMENT, MASSAGE TABLES & CHAIRS

- 500.1 Massage tables and chairs must be constructed with a smooth, cleanable, nonabsorbent surface, and must be cleaned and sanitized after each massage therapy session.
- 500.2 Linen storage shelves or cabinets shall be constructed of smooth, non-porous, corrosion, and water damage-resistant material.
- 500.3 Existing wooden or combination metal/ wood shelving that do not comply with these regulations shall be sealed with an enamel sealing paint or clear coat and the shelves shall be maintained in an easily cleanable condition.

501 CLEANING & SANITIZING – EQUIPMENT, TABLES, AND CHAIRS

- 501.1 All instruments, apparatus, equipment, tools, or appliances, and massage tables and chairs which are designed for multiple-use shall be cleaned and sanitized after being used on each customer.
- 501.2 All instruments, apparatus, equipment, tools, or appliances, and massage tables and chairs shall be wiped with a cleaning solution on all surfaces and then sanitized on any portion where the customer has made bare skin or hair contact including hand, head, and face rests, or feet after each customer.
- 501.3 All instruments, apparatus, equipment, tools, or appliances, and massage tables and chairs shall be sanitized by using an U.S. Environmental Protection Agency (U.S. E.P.A.) registered sanitizer and in accordance with the U.S. E.P.A. approved label.
- 501.4 Massage establishments and health spa facilities shall maintain adequate supplies for cleaning and sanitizing of all instruments, apparatus, equipment, tools, or appliances, and massage tables and chairs.
- 501.5 Heavy white paper may be substituted for sheets to cover the massage table or chair for single use only. The paper shall be discarded into sanitary solid waste receptacle after the completion of each massage therapy session.

502 MAINTENANCE & REPAIR – EQUIPMENT, FURNITURE, DEVICES, AND FIXTURES

- 502.1 The licensee shall ensure that all instruments, apparatus, equipment, tools, or appliances, furniture, devices, and fixtures, including but not limited to tables or chairs used for massage therapy, are clean and well-maintained.
- 502.2 The licensee shall ensure that all portable saunas, showers, tubs, basins, massage or steam tables, combs, brushes, shower caps and any other equipment used in a massage establishment or health spa facility are cleaned and sanitizer as specified in section 501.3.
- 502.3 The licensee shall ensure that any equipment that comes in contact with a customer of a massage therapist is cleaned with soap or detergent and hot water and is sanitized before the equipment is used on another customer.

- 502.4 All electrical equipment used for the care of a customer is clean and well-maintained and complies with current Underwriters Laboratories Inc. standards, or an equivalent nationally recognized testing laboratory.
- 502.5 All hydrotherapy equipment shall be:
- (a) Cleaned after each use;
 - (b) Well-maintained; and
 - (c) Only used in the manner prescribed by the manufacturer of the equipment.

503 SANITATION – LINENS & FURNISHINGS

- 503.1 All massage establishments and health spa facility shall provide a sufficient supply of clean linens for use by customers and massage therapists during the course of a massage therapy session.
- 503.2 All clean bedding such as pillows and blankets and linens shall be protected from contamination.
- 503.3 All clean bedding and linens shall be stored at least six (6) inches off the floor in shelves, compartments, or in closed containers such as storage cabinets, which are used for bedding and linen storage purposes only.
- 503.4 All linens shall be used on one customer only. No common-use linens shall be permitted and reuse is prohibited unless the linen has first been laundered using a sanitizing cycle.
- 503.5 Linens that are used during any part of a massage therapy session shall be immediately placed in a covered laundry receptacle to be washed and sanitized before use by the next customer.
- 503.6 Used linens shall be removed from the massage therapy room at the end of each massage therapy session.
- 503.7 Linens that are newly laundered and sanitized shall be used to recover cleaned and sanitized massage tables or chairs prior to providing massage therapy to the next customer. At no time shall linens that have made contact anywhere on one customer's body touch another customer's body.
- 503.8 Linens, such as towels placed on the face rest and/or on the seat of the massage chair or garments such as robes, to wear for an extra level of comfort and / or modesty that are used by customers receiving a chair massage poolside and wearing standard swimwear as permitted clothing, shall be stored and handled for laundering as specified in sections 503.4, 503.5, and 503.6.

503.9 Linens and garments that are found to be in poor condition shall not be used and shall be discarded and replaced with linens in good condition so that the damaged linens are not inadvertently laundered and reused.

503.10 Clean linens shall not be stored or transported in laundry bags, hampers, carts or other containers which have been used for soiled linen unless the licensee is able to demonstrate to the Department's satisfaction that the containers are, or can be, properly cleaned and their surfaces sanitized.

504 SANITATION – MESSAGE ESTABLISHMENT OR HEALTH SPA FACILITY-SUPPLIED LINENS, AND GARMENTS

504.1 Each massage establishment or health spa facility shall provide customers clean, sanitary, opaque linens or garments capable of covering the customer's specified anatomical areas.

504.2 Any garment provided for a customer to wear while waiting for or receiving massage therapy or making use of the massage establishment or health spa facility's other amenities shall be washed and sanitized after use and before it is offered for use to another person.

504.3 Linens and garments that are found to be in poor condition shall not be used and shall be discarded and replaced with linens in good condition as specified in section 503.9.

504.3 Sufficient laundry hampers or storage bins shall be provided for customers to return garments and similar articles to the massage establishment or health spa facility for cleaning and sanitizing.

504.5 Laundry hampers or storage bins shall be clearly marked as containing used garments to prevent inadvertent customer reuse.

504.6 Used or soiled garments or similar articles shall be kept separate from clean ones while being stored.

504.7 Single-use slippers or sandals provide to a customer for use shall be brand new.

504.8 Single-use slippers or sandals shall never be reused for another customer and shall be discarded in an appropriate solid waste receptacle immediately following its use.

505 SANITATION – MESSAGE ESTABLISHMENT OR HEALTH SPA FACILITY, ON-SITE LAUNDRY FACILITIES

505.1 Massage establishments or health spa facilities that supply and launder their own linens and garments shall launder, fold, and store linens and garments in an area that is clean and well maintained.

505.2 Separate storage areas shall be designated for soiled linen and garments away from clean linen and garments.

- 505.3 There shall be an adequate hot water supply to on-site laundry facilities as specified in sections 605, 606, and 702.1.
- 505.4 There shall be an adequate number of washing machines, dryers, and folding tables to handle the volume of laundry generated at the massage establishment or health spa facility.
- 505.5 Washing machines and dryers shall be installed as specified in chapter 6 and shall be placed:
- (a) At a minimum, on, a composite tile or other approved floor, with wall-to-floor junctures sealed with base coving;
 - (b) In a room with a minimum 50 foot-candles of light measured thirty inches (30 in.) above the floor;
 - (c) On adjacent walls with coverings of fiberglass-reinforced plastic paneling or equivalent where moisture is likely to occur; and
 - (d) In a room with an enclosed ceiling, finished with a cleanable surface.
- 505.6 The washing machine, dryers, and folding tables shall be maintained in good operating condition.
- 505.7 There shall be a handwashing sink, supplied with hot and cold running water and dispenser-fed liquid soap and disposable towels installed in the laundry room.
- 505.8 Prior to their next use, linens and garments shall be washed with soap or detergent and sanitized with a product labeled for that use.
- 505.9 Laundry that arrives in the laundry area, which has been exposed to a bio-hazardous event, shall be handled by the Biohazard Event Response Plan written for the massage establishment or health spa facility and all applicable regulatory requirements.
- 505.10 Laundered linens and garments shall be stored at least six (6) inches above the floor level in a clean, ventilated, illuminated, and well-maintained place until used to cover massage tables or chairs, or offered to customers to don or use for draping.

506 SANITATION — THIRD-PARTY LINEN PROVIDER

- 506.1 The Department recommends a third-party linen provider be used to provide laundered and sanitized linens to massage establishments and health spa facilities.
- 506.2 When a third-party linen provider is used, then any linen, towel, and/or conveyances found to be dirty, stained, or otherwise in poor condition shall not be used and shall be rejected upon receipt and returned to the third-party linen provider.

507 SANITATION – FURNISHINGS, USED BEDDING, AND PROHIBITION

- 507.1 No used bedding, upholstered furniture, or furnishings shall be recovered from any landfill, dump, dumpster or other waste disposal, junkyard, or hospital for the purpose of reuse in a massage establishment or health spa facility even after sterilization at an approved sterilization plant.
- 507.2 Except as specified in section 507.3, no licensee or manager shall sell, trade, give away, or otherwise allow the transfer of any used bedding from the massage establishment or health spa facility for use at any other location.
- 507.3 A licensee or manager may exchange furniture and properly-constructed massage tables and chairs that are in good condition between properties that are operated under the same management group, when such a need arises.

508 PREVENTING CONTAMINATION FROM CUSTOMER – SUPPLIES, PERSONAL HYGIENE PRODUCTS

- 508.1 Multi-use personal hygiene products such as lotion, hairspray, or body spray shall be dispensed from a container that prevents the contamination of the product by customers.
- 508.2 Multi-use personal hygiene product containers placed out for customer use shall be maintained in a reasonably clean condition and routinely wiped down with a sanitized wiping cloth.
- 508.3 If a multi-use product appears as if it were misused by a customer and is now suspected to be contaminated, it shall be discarded immediately.
- 508.4 The communal use of multi-use items that contact the body of a customer, such as stick deodorant, razors, or toothbrushes, is strictly prohibited.
- 508.5 Massage establishment or health spa facility shall provide only single-use/disposable personal hygiene items to its customers if the item contacts the body directly during use.
- 508.6 Used single-use articles shall be discarded following use by the customers, except where the customers are permitted to retain the item for personal use once they depart the massage establishment or health spa facility.
- 508.7 If multiple-use articles that directly contact the customer's body are offered in lieu of single-use articles, the multi-use article shall be retained by the customer or discarded in the same manner as single-use/disposable articles, regardless of whether or not there is a useable amount of product remaining in the container.

509 PREVENTING CONTAMINATION OF ICE FOR CONSUMPTION

- 509.1 Ice used in a massage establishment or health spa facility shall be made of water that complies with Chapter 6 of these regulations.
- 509.2 The licensee, manager, or massage therapist shall adhere to a routine maintenance and cleaning schedule for ice machines.
- 509.3 Ice shall be handled, transported and stored in a manner which protects it from contamination.
- 509.4 Ice machines that are provided for direct use by customers shall be designed to dispense ice cubes automatically from a storage area, which is within the machine and is inaccessible to the customer.

**510 PREVENTING CONTAMINATION FROM MASSAGE THERAPIST —
MASSAGE SUPPLEMENTARY AIDS**

- 510.1 Massage supplementary aids used for massage therapy shall be of high-quality and used only for the purpose indicated on the product label. Massage supplementary aids include but are limited to:
- (a) Superficial heat (hot packs);
 - (b) Cold (ice packs);
 - (c) Water;
 - (d) Supplementary aids such as non-prescription, non-medicinal salts, or salt glows, powders, liquids, creams, rubbing alcohol, liniments, antiseptics, oils, lotions, ointments; or
 - (e) Other similar preparations commonly used in massage therapy.

**511 PREVENTING CROSS-CONTAMINATION FROM PRODUCTS —
MASSAGE SUPPLEMENTARY AIDS**

- 511.1 Massage supplementary aids shall be dispensed in a manner that prevents cross-contamination of the product, or the product dispenser shall be discarded between customers.
- 511.2 If the massage therapist picked up and touched the outside of any multiple-use massage supplementary aid bottle or container to dispense product while the massage is in progress, the supplementary aid bottle or container shall be wiped down with a sanitized wiping cloth between customers.

- 512 PREVENTING CROSS-CONTAMINATION FROM PRODUCTS — MASSAGE SUPPLEMENTARY AIDS, COLD AND SUPERFICIAL HEAT THERAPY PACKS**
- 512.1 Ice packs used for cold therapy shall be commercial grade and specifically designed for repeat use such as in a massage establishment or health spa facility.
- 512.2 Ice packs shall be wiped down with sanitizer at an effective concentration prior to reuse or storage.
- 512.3 Damaged ice packs or ice packs that have exceeded their useful lives shall be discarded and replaced.
- 512.4 Hot packs used to provide superficial heat therapy shall be commercial grade and be heated in a commercial heating unit such as a commercial hydroculator.
- 512.5 The use of domestic equipment such as food steamers to heat therapy packs or to steam towels is prohibited in a massage establishment or health spa facility is prohibited.
- 512.6 Steamed towels may be used only once and then shall be placed in the dirty laundry for washing and sanitizing. At no time should used towels be placed back into a steamer or hydroculator for reheating or reuse.

CHAPTER 6 DRINKING WATER

- 600 SOURCE — APPROVED SYSTEM***
- 600.1 The only approved system for drinking water is the District of Columbia public water system.
- 600.2 A massage establishment or health spa facility shall not obtain water for its operations from a water system that is not the District of Columbia public water system.
- 601 SOURCE — SYSTEM FLUSHING AND DISINFECTION***
- 601.1 A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system.
- 602 SOURCE — BOTTLED DRINKING WATER***
- 602.1 Bottled drinking water used in a massage establishment or health spa facility shall be obtained from approved sources in accordance with 21 CFR 129.1 – Current good manufacturing practice.

603 QUALITY – STANDARDS*

603.1 Water from a public water system or potable water shall meet the requirements of the applicable provisions of 40 CFR Part 141 – National Primary Drinking Water Regulations, and District of Columbia drinking water quality standards.

603.2 Potable water shall be used for drinking and sanitizing of equipment, furniture, devices, or fixtures.

604 QUALITY – NONDRINKING WATER*

604.1 A nondrinking water or nonpotable water supply may be used only if its use is approved by the Department.

604.2 Nondrinking water may be used for purposes unrelated to massage establishment or health spa facility's massage therapy including, but not limited to, air conditioning, fire protection, irrigation, plant and equipment cleanup, and other sanitary purposes.

605 QUALITY AND AVAILABILITY – CAPACITY*

605.1 The water source and system shall be of sufficient capacity to meet the water demands of the massage establishment or health spa facility.

605.2 Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the massage establishment or health spa facility.

606 QUALITY AND AVAILABILITY – PRESSURE

606.1 Hot and/or cold water under pressure shall be provided to all fixtures and equipment that are required to use hot and/or cold water, except that water supplied as specified in section 608.1 in response to a temporary interruption of a water supply that is not required to be under pressure.

607 DISTRIBUTION, DELIVERY, AND RETENTION – SYSTEM

607.1 Water shall be received from the source through the use of an approved public water main, or through one or more of the following, which shall be constructed, maintained, and operated according to the applicable provisions of 40 CFR Part 141 – National Primary Drinking Water Regulations, and District of Columbia drinking water quality standards:

- (a) Water transport vehicles; or
- (b) Water containers.

608 DISTRIBUTION, DELIVERY, AND RETENTION – ALTERNATIVE WATER SUPPLY

608.1 Water meeting the requirements specified in sections 600 through 607 shall be made available for a massage establishment or health spa facility with a temporary interruption of its water supply through:

- (a) A supply of containers of commercially bottled drinking water;
- (b) One or more closed portable water containers;
- (c) An enclosed vehicular water tank;
- (d) An on-premises water storage tank; or
- (e) Piping, tubing, or hoses connected to an adjacent approved source.

CHAPTER 7 PLUMBING SYSTEM**700 MATERIALS – APPROVED MATERIALS, USE***

700.1 A plumbing system and hoses conveying water shall be constructed and repaired with approved materials according to the International Plumbing Code (2006 edition) or most recent edition, Title 12F of the District of Columbia Municipal Regulations, and the District's 2008 Supplements, hereinafter referred to as the "Plumbing Code".

700.2 A water filter shall be made of safe materials.

701 DESIGN, CONSTRUCTION, AND INSTALLATION – APPROVED SYSTEM AND CLEANABLE FIXTURES*

701.1 A plumbing system shall be designed, constructed, and installed according to the Plumbing Code.

701.2 A plumbing system shall be of sufficient size and shall be designed, constructed, installed and maintained according to the Plumbing Code to:

- (a) Properly convey sewage and liquid disposable waste from the premises;
- (c) Avoid constituting a source of contamination to potable water, equipment and devices, or creating any unsanitary condition; and
- (d) Provide sufficient floor drainage to prevent excessive pooling of water or other disposable waste in all areas where floors are subject to flooding-type cleaning or where normal operations release or discharge water or other liquid waste on the floor.

701.3 A plumbing fixture such as a handwashing facility, toilet, or urinal shall be easily cleanable.^N

701.4 Each massage establishment or health spa facility shall be equipped with effective plumbing and sewage facilities and adequate accommodations.

702 DESIGN, CONSTRUCTION, AND INSTALLATION – HANDWASHING SINKS, WATER TEMPERATURE, AND FLOW*

702.1 All handwashing sinks, including those in toilet rooms, shall be equipped to provide water at a temperature of at least one hundred degrees Fahrenheit (100° F) (thirty-eight degrees Centigrade (38°C)) through a mixing valve, a combination faucet, or tempered water and a single faucet.

702.2 A steam mixing valve shall not be used at a handwashing sink.

702.3 A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least fifteen (15) seconds without the need to reactivate the faucet.

702.4 An automatic handwashing facility shall be installed in accordance with the manufacturer's instructions.

703 HANDWASHING SINKS – USE, NUMBER, AND LOCATION

703.1 Handwashing sinks shall be located to allow convenient use by employees in, or immediately adjacent to, toilet rooms.

703.2 A handwashing sink shall be maintained so that it is accessible at all times for employees' use.

703.3 A handwashing sink shall not be used for purposes other than handwashing.

703.4 An automatic handwashing facilities may be substituted for handwashing sinks in a massage establishment or health spa facility that has at least one (1) handwashing sink.

703.5 An automatic handwashing facility shall be used in accordance with the manufacturer's instructions.

704 HANDWASHING SINKS – HANDWASHING CLEANSER, AVAILABILITY, HAND DRYING PROVISION, AND HANDWASHING SIGNAGE

704.1 Each handwashing sink or group of two (2) adjacent sinks shall be provided with hand cleaning liquid or powder.

704.2 Each handwashing sink or group of adjacent sinks shall be provided with:

- (a) Individual, disposable towels; or

(b) A heated-air, hand-drying device.

704.3 A sign or poster that notifies employees to wash their hands shall be provided at all handwashing sinks.

705 HANDWASHING SINKS – DISPOSABLE TOWELS, WASTE RECEPTACLE

705.1 A handwashing sink or group of adjacent sinks that is supplied with disposable towels or suitable drying devices shall be provided with a waste receptacle as specified in section 805.3.

706 DESIGN, CONSTRUCTION AND INSTALLATION – TOILETS AND URINALS

706.1 Toilet facilities shall be provided in accordance with section 707 and the Plumbing Code.

707 TOILETS AND URINALS— NUMBER, CAPACITY, CONVENIENCE AND ACCESSIBILITY, PROHIBITION*

707.1 Each massage establishment or health spa facility shall maintain toilet facilities for employees, which shall consist of a toilet room or toilet rooms with proper and sufficient water closets and lavatories. Toilet facilities shall be conveniently located and readily accessible to all personnel.

707.2 Toilets and urinals provided for employees' use shall be in accordance with the Plumbing Code. Urinals may be substituted for toilets if the substitution is approved by the Department of Consumer and Regulatory Affairs and the Department.

707.3 The licensee shall, at a minimum:

(a) Maintain the toilet facilities in a sanitary condition that is clean and free of trash and litter;

(b) Keep the facilities in good repair at all times; and

(c) Provide self-closing doors.

707.4 A massage establishment or health spa facility that employs both males and females shall have separate toilet facilities for each sex; unless the massage establishment or health spa facility is specifically designated for one (1) gender or the other. This restroom may be located by itself, in a bathroom, or in a locker room.

707.5 When locker rooms are provided, there shall be both a male and female locker room available, unless the facility is specifically designated for one (1) gender or the other.

- 707.6 If the massage establishment or health spa facility serves only one (1) gender, a restroom shall be made available for employees of the opposite gender as specified in section 707.4.
- 707.7 Toilet facilities shall be deemed conveniently located and accessible to employees during all hours of operation if they are:
- (a) Located within the same building as the business they serve; and
 - (b) Accessible during working hours without going outside the building.
- 707.8 At no time shall the consumers or employees of one (1) gender enter the bathroom, restroom, or locker room of the other gender, except for routine clean-up after all of the consumers are gone or there is a maintenance emergency that cannot be handled by an employee of the same gender as belongs to the restroom, bathroom, or locker room.
- 707.9 Except as provided in section 707.8, restroom, bathroom, or locker room shall be cleared of all patrons of the opposite sex before routine cleaning or maintenance emergency commences by an employee of the opposite gender.

708 TOILETS AND URINALS – TOILET ROOMS ENCLOSED

- 708.1 A toilet room located on the premises shall be completely enclosed and provided with a tight-fitting and self-closing door, except that this requirement does not apply to a toilet room that is located outside a massage establishment or health spa facility.
- 708.2 Toilet room doors shall be kept closed except during cleaning and maintenance operations.

709 TOILETS AND URINALS – TOILET TISSUE, RECEPTACLE COVERED AND AVAILABILITY

- 709.1 A supply of toilet tissue shall be available at each toilet.
- 709.2 A covered receptacle for feminine hygiene products shall be provided, as appropriate, in accordance with section 709.1.
- 709.3 A toilet room used by females shall be provided with a covered receptacle for feminine hygiene products.

710 DESIGN, CONSTRUCTION, AND INSTALLATION – BACKFLOW PREVENTION, AIR GAP*

- 710.1 An air gap between the water supply inlet and the flood level rim of the plumbing fixture or equipment shall be at least twice the diameter of the water supply inlet and may not be less than twenty-five millimeters (25 mm) or one inch (1 in).

711 DESIGN, CONSTRUCTION, AND INSTALLATION – BACKFLOW PREVENTION DEVICE, DESIGN STANDARD

711.1 A backflow or backsiphonage prevention device installed on a water supply system shall meet American Society of Sanitary Engineering standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device.

712 DESIGN, CONSTRUCTION, AND INSTALLATION – CONDITIONING DEVICE, DESIGN

712.1 A water filter, screen, or other water-conditioning device installed on water lines shall be located to facilitate disassembly for periodic servicing and cleaning. A water filter element shall be of the replaceable type.

713 NUMBERS AND CAPACITIES – BACKFLOW PREVENTION DEVICE, WHEN REQUIRED*

713.1 A plumbing system shall be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system, including on a hose bibb if a hose is attached or on a hose bibb if a hose is not attached and backflow prevention is required by the Plumbing Code by:

- (a) Providing an air gap as specified in section 710; or
- (b) Installing an approved backflow prevention device as specified in section 711.

714 NUMBERS AND CAPACITIES – BACKFLOW PREVENTION DEVICE, CARBONATOR*

714.1 If an air gap is not provided as specified in section 710, a double check valve with an intermediate vent preceded by a screen of not less than one hundred (100) mesh to twenty-five and four tenths millimeters (25.4 mm) (100 mesh to 1 inch) shall be installed upstream from a carbonating device and downstream from any copper in the water supply line.

714.2 A single or double check valve attached to the carbonator need not be of the vented type if an air gap or vented backflow prevention device has been otherwise provided as specified in section 713.1.

715 LOCATION AND PLACEMENT – BACKFLOW PREVENTION DEVICE

715.1 A backflow prevention device shall be located so that it may be serviced and maintained.

716 LOCATION AND PLACEMENT – CONDITIONING DEVICE

716.1 A water filter, screen, or other water-conditioning device installed on water lines shall be located to facilitate disassembly for periodic servicing and cleaning.

716.2 Fill-and-drain whirlpool spa bathtub pumping and recirculation systems shall be treated with an effective biocide and scale-reduction agent as recommended by the manufacturer.

717 OPERATION AND MAINTENANCE — PROHIBITING A CROSS CONNECTION*

717.1 A person shall not create a cross connection by connecting a pipe or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality.

717.2 The piping of a nondrinking water system shall be durably identified so that it is readily distinguishable from piping that carries drinking water.^N

718 OPERATION AND MAINTENANCE — SCHEDULING INSPECTION AND SERVICE FOR A WATER SYSTEM DEVICE

718.1 A device such as a water treatment device or backflow preventer shall be scheduled for inspection and service, in accordance with the manufacturer's instructions and as necessary to prevent device failure based on local water conditions. Records demonstrating inspection and service shall be maintained by supervisors.

719 OPERATION AND MAINTENANCE— SYSTEM MAINTAINED IN GOOD REPAIR*

719.1 A plumbing system shall be:

- (a) Repaired according to the Plumbing Code; and
- (b) Maintained in good repair.

720 DESIGN, CONSTRUCTION AND INSTALLATION — SERVICE SINKS

720.1 Service sinks and curbed cleaning facilities shall be provided in accordance with section 721 and the Plumbing Code.

721 SERVICE SINKS — NUMBERS AND CAPACITIES

721.1 At least one (1) service sink or one (1) curbed cleaning facility equipped with a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.

722 SEWAGE AND RAINWATER DISPOSAL — APPROVED SYSTEM*

722.1 Sewage shall be disposed through an approved facility that is a public sewage treatment plant or an individual sewage disposal system that is sized, constructed, maintained, and operated according to the Plumbing Code.

723 SEWAGE AND RAINWATER DISPOSAL – OTHER LIQUID WASTES AND RAINWATER

723.1 Condensate drainage and other nonsewage liquids and rainwater shall be drained from point of discharge to disposal according to applicable District laws and regulations.

724 SEWAGE AND RAINWATER DISPOSAL – CONVEYING SEWAGE*

724.1 Sewage shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated in accordance with the Plumbing Code.

CHAPTER 8 DESIGN, CONSTRUCTION, INSTALLATION, AND MAINTENANCE OF PHYSICAL FACILITIES

800 DESIGN & CONSTRUCTION – BUILDING MATERIALS & WORKMANSHIP

800.1 The licensee of a newly constructed, remodeled or renovated massage establishment or health spa facility shall ensure that the design, construction, building materials, and workmanship complies with the District's Construction Codes of 2008, or most recent edition, as specified in section 102.1(a) and this chapter.

800.2 The licensee of an existing massage establishment or health spa shall maintain in good condition the physical integrity of its massage establishment or health spa facility by repairing or replacing structural or design defects, operating systems, or fixtures in use before the effective date of these regulations in accordance with the District's Construction Codes of 2008, or most recent edition, as specified in section 102.2.

800.3 At least thirty (30) days before being construction or remodeling of a massage establishment or health spa facility, the licensee shall submit construction plans with all schedules, including but not limited to floor plans, elevations schematics, etc. to the Department for review and approval, as specified in section 1208.

801 CONSTRUCTION & INSTALLATION – FLOORS, WALLS, CEILINGS, AND UTILITY LINES

801.1 Except as specified in section 805, the floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable, except that antislip floor coverings or applications may be used for safety reasons.

801.2 The floors in massage therapy rooms, on-site laundry areas, food staging or serving areas, in bathrooms, locker rooms, and toilet rooms, which are next to spas,

whirlpool therapy tubs, bathtubs, showers or toilets, or any other wet areas shall be constructed of smooth, durable, nonabsorbent and easily cleanable material.

- 801.3 Every concrete, tile, ceramic and vinyl floor installed in an on-site laundry area, food areas, and areas in bathrooms, restrooms, locker rooms, and toilet rooms, which are next to spas, whirlpool therapy tubs, bathtubs, showers or toilets shall be coved at the junctures between the floor and the walls.
- 801.4 All material used to cove the junctures shall be fitted snugly to the floor and the walls so that they are water tight and there are not openings large enough to permit the entrance of vermin.
- 801.5 Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.
- 801.6 Exposed horizontal utility service lines and pipes shall not be installed on the floor and utility service lines and pipes shall not be unnecessarily exposed.
- 801.7 The material used in constructing the walls and ceilings must be joined along their edges so as to leave no open spaces or cracks.
- 801.8 Massage therapy room shall be constructed and maintained to provide client privacy; and locks or devices that prevent easy entry or exit shall not be permitted on any door.

802 CONSTRUCTION & INSTALLATION — FLOORS, WALLS, CEILINGS, AND CABINETS

- 802.1 Whenever evidence of significant water/moisture intrusion from any source is found within or on the walls, ceilings, attic spaces, crawl spaces, floors, carpeted surfaces, ventilation ducts, insulation, or other materials or areas which may promote the growth of mold, the source of the water or moisture shall be identified and stopped to prevent or reduce mold growth.
- 802.2 Whenever a need arises to conduct a large-scale mold remediation affecting more than 1,000 square feet within a massage establishment or health spa facility, the Department shall be notified in writing of actions to be taken.
- 802.3 All under-the-counter cabinets shall be maintained in a clean, dry, and structurally sound condition. If the understructure becomes water damaged, the cabinets shall be replaced.

803 CLEANABILITY — FLOOR AND WALL JUNCTURES, COVED, AND ENCLOSED OR SEALED

- 803.1 The floors in a massage establishment or health spa facility in which cleaning methods other than water flushing are used, the floor and wall junctures shall be coved and closed to no larger than one millimeter (1 mm) or one thirty-second of an inch (1/32 in.).

803.2 The floors in a massage establishment or health spa facility in which water flush cleaning methods are used shall be provided with floor drains and be graded to drain. The floor and wall junctures shall be coved and sealed.

804 CLEANABILITY – FLOOR CARPETING, RESTRICTIONS AND INSTALLATION

804.1 A floor covering such as carpeting or similar material shall not be installed as a floor covering in toilet room areas where handwashing sinks, toilets, or urinals are located, refuse storage rooms, or other areas where the floor is subject to moisture.

804.2 If carpeting is installed as a floor covering in areas other than those specified in section 804.1, it shall be:

- (a) Securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another similar method; and
- (b) Installed tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by metal stripping or some other means.

804.3 The Department may prohibit the use of carpeting in any other area which it deems would be made unsanitary by the use of carpeting.

805 CLEANABILITY – FLOOR COVERING, MATS AND DUCKBOARDS

805.1 The licensee, manager, or massage therapist shall inspect the premises prior to each consumer's use to ensure that the floors are dry.

805.2 Non-absorbent and non-carpeted flooring or rubber or impervious mats shall be placed where the consumer enters and exits massage therapy rooms, dressing rooms, and toilet facilities. These mats shall be sanitized after each consumer's use.

805.3 Mats and duckboards shall be designed to be removable and easily cleanable.

806 CLEANABILITY – FLOORS, WALL AND CEILING COVERINGS, AND COATINGS

806.1 All walls, ceilings, doors, windows, skylights, other closures, fixtures and decorative material shall be kept clean and in good repair.

806.2 The walls of massage therapy rooms, bathrooms, restroom, locker rooms, toilet rooms, and food areas shall be smooth and easily cleanable.

806.3 In wet areas of the bathroom, the walls and ceilings shall be constructed of materials and have finishes that are resistant to water.

806.2 Except in areas used only for dry storage, concrete, porous blocks, or bricks used for indoor wall construction shall be finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface.

807 CLEANABILITY AND EXPOSURE – FLOORS, WALLS AND CEILINGS ATTACHMENTS, STUDS, JOISTS, AND RAFTERS

807.1 To facilitate cleaning, floors, workrooms, and passageways shall be kept free from protruding nails, splinters, loose boards, and unnecessary holes and openings.

807.2 Except as specified in section 807.3, attachments to walls and ceilings such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items, and other attachments shall be easily cleanable.

807.3 In public areas, wall and ceiling surfaces and decorative items and attachments that are provided for ambiance need not meet the requirements of section 808.1 if they are kept clean.

807.4 Studs, joists, rafters and beams shall not be exposed in bathrooms, restrooms, locker rooms, toilet rooms, on-site laundry areas, food areas, or in areas subject to moisture.

808 PHYSICAL FACILITIES – MAINTENANCE, REPAIRS, FLOOR

808.1 The physical facilities shall be maintained in good repair.

808.3 Every floor and floor covering, such as carpet, shall be kept clean and in good repair, sanitized or replaced so that it does not become a hazard to health or safety.

809 PHYSICAL FACILITIES – MAINTENANCE, PUBLIC AREAS

809.1 All public areas of a massage establishment or health spa facility, such as the lobbies, and merchandising and retail areas must be maintained in a clean and sanitary manner, free of litter, rubbish, and nuisances.

810 PHYSICAL FACILITIES – MAINTENANCE, CLEANING OF MASSAGE THERAPY ROOMS

810.1 Once a customer is dressed or has moved on to use other massage establishment or health spa amenities, the massage therapy room shall be prepared for the customer as follows:

- (a) All used linens and garments shall be removed and placed in proper containers for laundering;
- (b) Any single-use items such as used heavy white paper massage table covers shall be disposed in the proper solid waste receptacles;
- (c) The massage table shall be cleaned and sanitized, then allowed to air dry;

- (d) The massage supply bottles shall be cleaned and sanitized, removing any product on the container from being handled by the massage therapist. The supplies can then be replenished or replaced, as needed;
- (e) Any tools and/or equipment that were used for the massage therapy shall be removed for cleaning and sanitizing and replaced, as needed;
- (f) Clean linens and/or heavy white paper shall be made readily available to be offered to the next customer; and
- (g) Any other cleaning or maintenance that is needed to render the massage therapy room ready for use shall be performed.

811 PHYSICAL FACILITIES – LIGHTING AND ELECTRONIC DEVICES

- 811.1 All rooms of a massage establishment or health spa facility shall have at least one (1) electrical source of light. Lighting luminaries and fixtures may be of incandescent, fluorescent, or high density discharge types.
- 811.2 At least fifty (50) foot-candles of light shall be provided in each area and the laundry area.
- 811.3 At least twenty (20) foot-candles of light shall be provided in each bathroom, restroom, locker room, toilet room or other areas when fully illuminated for cleaning.
- 811.4 An average illumination value of ten (10) foot-candles of light, but never less than 7.5 foot-candles of light shall be provided in other areas within a massage establishment or health spa facility, including massage therapy rooms, offices, lobbies, retail shops, and waiting areas.
- 811.5 The above illumination levels shall be attainable at all times while the massage establishment or health spa facility is occupied, except as specified in section 811.6.
- 811.6 Lighting may be dimmed for therapeutic reasons during a massage therapy session so long as there is enough light to safely see to conduct the massage therapy or to leave the room in case of an emergency.
- 811.7 No massage establishment or health spa facility shall be equipped with tinted windows or two-way mirrors in any room therein.
- 811.8 No massage establishment or health spa facility shall be equipped with any electronic, mechanical, or artificial device used or capable of being used for recording either audio or video activities, conversations, or other sounds in massage therapy rooms or any other room used by customers.

812 PHYSICAL FACILITIES – SMOKE ALARMS

812.1 Each distinct area of a massage establishment or health spa facility separated by a doorway, whether or not a door is currently present, shall be equipped with at least one (1) working smoke alarm which is installed, maintained, and tested according to the District's International Fire Code (2006 edition) or most recent edition, as specified in section 102.1(a)(iv).

812.2 The smoke alarm shall be free of foreign matter such as tape or paint which could impair its proper function.

813 PHYSICAL FACILITIES – HEATING AND VENTILATION SYSTEMS

813.1 All bathrooms, restrooms, locker rooms, toilet rooms, and laundry rooms shall be adequately ventilated so that excessive moisture is removed from the room. Acceptable ventilation includes mechanical exhaust ventilation, a recirculating vent, or screened windows, except as specified in section 813.2.

813.2 Section 813.1 does not apply to rooms within a massage establishment or health spa facility that are intentionally humid, such as a steam room.

813.3 Each system for heating, cooling or ventilation shall be properly maintained and operational at all times when the rooms are occupied.

813.4 All massage therapy rooms, bathrooms, restrooms, locker rooms, and toilet rooms shall be capable of being maintained at a temperature between sixty-eight degrees Fahrenheit (68° F) twenty degrees (20° C) and eighty degrees Fahrenheit (80° F) (twenty-seven degrees (27° C) while being used by customers, unless intentionally warmer for therapeutic purposes, such as in a sauna.

813.5 The use of portable space heaters is prohibited.

814 PHYSICAL FACILITIES – CLEANABILITY, SANITIZATION AND MAINTENANCE OF DRESSING ROOMS, LOCKER ROOMS, AND TOILET FACILITIES

814.1 All massage establishments or health spa facilities shall be equipped with dressing rooms and toilet facilities, which include a water closet and hand washing sinks, including hot and cold running water, pump soap, and a paper towel dispenser or equivalent hand drying equipment.

814.2 All bathtubs, showers, shower enclosures, shower curtains, steam rooms, saunas, spas, therapy whirlpool tubs, toilets, lavatories, benches, lockers, and/or other similar equipment shall be kept in good repair.

814.3 All bathrooms, restrooms, locker rooms, and dressing rooms shall be kept in sanitary condition and good repair.

- 814.4 All surfaces of showers, shower enclosures and/or curtains, toilets, urinals, lavatories, countertops, benches and other fixtures which may come in contact with a consumer's body within a bathroom, restroom, or locker room shall be cleaned and sanitized each day the massage establishment or health spa facility is in operation.
- 814.5 All other surfaces of the bathrooms, restrooms, dressing rooms, and locker rooms shall be cleaned and sanitized when visibly soiled or dirty, but at least weekly.
- 814.6 When being used by consumers, bathtubs, therapy whirlpool tubs, or similar equipment shall be drained and every surface which may come in contact with a person's body shall be cleaned and sanitized between consumers.

815 PHYSICAL FACILITIES – EMPLOYEE ACCOMMODATIONS, DESIGNATED AREAS

- 815.1 Areas designated for employees use shall be located so that equipment, devices, fixtures, linens, furnishings, garments, or other supplies are protected from contamination.
- 815.2 Lockers or other suitable facilities shall be located in a designated room or area where contamination of equipment, devices, fixtures, linens, furnishings, garments, or other supplies cannot occur.

816 PHYSICAL FACILITIES – OUTDOOR AREAS, SURFACE CHARACTERISTICS

- 816.1 Outdoor walking and driving areas shall be surfaced with concrete, asphalt, or gravel, or other materials that have been effectively treated to minimize dust, facilitate maintenance, and prevent muddy conditions.
- 816.2 Exterior surfaces of buildings shall be of weather-resistant materials, and shall comply with applicable District laws and regulations.

817 PHYSICAL FACILITIES – MAINTAINING PREMISES, UNNECESSARY ITEMS AND LITTER

- 817.1 The grounds surrounding a massage establishment or health spa facility under the control of the licensee shall be kept in a condition that will protect against the contamination of equipment, devices, fixtures, linens, furnishings, garments, or other supplies.
- 817.2 The methods for adequate maintenance of grounds include, but are not limited to, the following:
- (a) Properly storing or removing unnecessary equipment that is nonfunctional or no longer used, removing litter and waste, and cutting weeds or grass within the immediate vicinity of the physical facility that may constitute an attractant, breeding place or harborage for vectors or pests;

- (b) Maintaining roads and parking lots so that they do not constitute a nuisance; and
- (c) Adequately draining areas that may provide a breeding place for vectors.

817.3 If the massage establishment's or health spa facility's grounds are bordered by grounds not under their control and that are not maintained in the manner described in section 817.2, care shall be exercised by the licensee through inspection, extermination, or other means to exclude pests, dirt, and filth that may constitute an attractant, breeding place or harborage for vectors or pests.

818 PHYSICAL FACILITIES – CLEANING VENTILATION SYSTEMS, NUISANCE, AND DISCHARGE PROHIBITION

818.1 Intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt, and other materials.

818.2 If vented to the outside, ventilation systems shall not create a public health hazard or nuisance, or unlawful discharge.

819 PHYSICAL FACILITIES – CLEANING OF PLUMBING FIXTURES

819.1 Plumbing fixtures such as handwashing sinks, toilets, and urinals shall be cleaned as often as necessary to keep them clean and well-maintained.

820 PHYSICAL FACILITIES – CLEANING FREQUENCY, STORING MAINTENANCE TOOLS, AND DRYING MOPS

820.1 The physical facilities shall be cleaned as often as necessary to keep them clean.

820.2 Maintenance tools such as brooms, mops, vacuum cleaners, and similar items shall be:

- (a) Stored so they do not contaminate equipment, devices, fixtures, linens, furnishings, garments, or other supplies; and
- (b) Stored in an orderly manner that facilitates cleaning the area used for storing maintenance tools.

820.3 After use, mops shall be placed in a position that allows them to air-dry without soiling walls, equipment, or supplies.

821 PHYSICAL FACILITIES – CONTROLLING PESTS*

821 .1 The presence of insects, rodents, and other pests shall be controlled to minimize their presence on the premises by:

- (a) Routinely inspecting incoming shipments of supplies, and laundered linen and garments;
- (b) Routinely inspecting the premises for evidence of pests;^N
- (c) Using methods, if pests are found, such as trapping devices or other means of pest control as specified in sections 1102, 1107 and 1108; and
- (d) Eliminating harborage conditions.^N

821.2 The licensee shall maintain a copy of the establishment's professional service contract and service schedule, which documents the following information:

- (a) Name and address of its District licensed pest exterminator/contractor;
- (b) Frequency of pest extermination services provided under the contract; and
- (c) Date pest extermination services were last provided to the establishment.

822 PHYSICAL FACILITIES – REMOVING DEAD OR TRAPPED BIRDS, INSECTS, RODENTS, AND OTHER PESTS

822.1 Dead or trapped birds, insects, rodents, and other pests shall be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition or the attraction of pests.

823 PHYSICAL FACILITIES – PROHIBITING ANIMALS*

823.1 Patrol dogs accompanying police or security officers and sentry dogs running loose in outside fenced areas or service animals providing assistance to individuals with physical handicaps may be allowed in a massage establishment or health spa facility if the presences of the animals do not result in contamination of the massage establishment or health spa facility's equipment, devices, fixtures, linens, furnishings, garments, or other supplies.

823.2 Dogs, cats, birds, or other animals shall not be permitted in a massage establishment or health spa facility, except as provided in section 823.1.

823.3 Fish, in an aquarium, may be allowed in a massage establishment or health spa facility if the aquarium is maintained in a sanitary condition.

CHAPTER 9 REFUSE, RECEPTACLES, AND REMOVAL

900 REFUSE – INDOOR STORAGE AREA

900.1 If located within a massage establishment or health spa facility, storage areas for refuse shall meet the requirements specified in section 906.

901 REFUSE — OUTDOOR STORAGE SURFACE

901.1 An outdoor storage surface for refuse shall be constructed of nonabsorbent material such as concrete or asphalt and shall be smooth, durable, and sloped to drain.

902 REFUSE — OUTDOOR ENCLOSURE

902.1 If used, an outdoor enclosure for refuse shall be constructed of durable and cleanable materials.

903 REFUSE — RECEPTACLES

903.1 Receptacles and waste handling units for refuse and for use with materials containing food residue shall be durable, cleanable, insect- and rodent-resistant, leakproof, nonabsorbent and maintained in good repair.

903.2 Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the massage establishment or health spa facility, or within closed outside receptacles.

904 REFUSE — OUTSIDE RECEPTACLES

904.1 Receptacles and waste handling units used outside the massage establishment or health spa facility shall be designed and constructed to have tight-fitting lids, doors, or covers.

904.2 Receptacles and waste handling units for refuse such as an on-site compactor shall be installed so that accumulation of debris, insect, and rodent attraction and harborage are minimized, and effective cleaning is facilitated around and, if the unit is not installed flush with the base pad, under the unit.

905 REFUSE — STORAGE AREAS, RECEPTACLES, AND COVERING

905.1 An inside storage room and area, outside storage area and enclosure, and receptacles shall be of sufficient capacity to hold the refuse that accumulate.

905.2 A receptacle shall be provided in each area of the massage establishment or health spa facility where refuse is generated or commonly discarded.

905.3 If disposable towels are used at handwashing sinks, a waste receptacle shall be located at each sink or group of adjacent sinks.

906 REFUSE — STORAGE AREAS, RECEPTACLES, AND LOCATION

906.1 Refuse shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.

906.2 An area designated for refuse shall be located so that a public health hazard or nuisance is not created and maintained free of unnecessary items, as specified in section 817.

906.3 Storage areas and enclosures for refuse and waste handling equipment shall be located at a distance from the building that minimizes the entrance of pests and other vermin and shall not create a public health hazard or nuisance or interfere with the cleaning of adjacent space.

907 REFUSE — AREAS, ENCLOSURES, AND RECEPTACLES, GOOD REPAIR

907.1 Storage areas, enclosures, and receptacles for refuse shall be maintained in good repair.

908 REFUSE — OUTSIDE STORAGE PROHIBITIONS

908.1 Except as specified in section 908.2, refuse receptacles not meeting the requirements specified in section 903, such as receptacles that are not rodent-resistant, unprotected plastic bags and paper bags shall not be stored outside.

908.2 Cardboard or other packaging material that awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage problem.

909 REFUSE — REMOVAL FREQUENCY

909.1 Refuse shall be removed from the premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents and that protects against contamination of equipment, devices, fixtures, linens, furnishings, garments, supplies, water supply, or ground surfaces.

909.2 The licensee shall maintain a copy of the facility's professional service contract which documents the following information:

- (a) Name and address of its District licensed trash or solid waste contractor;
- (b) Duration of the contract; and
- (c) Frequency of trash or solid waste collection services provided under the contract.

909.3 Trash or solid waste collection shall comply with title 21, chapter 7 of the DCMR.

910 REFUSE — CLEANING RECEPTACLES, IMPLEMENTS, AND SUPPLIES

910.1 Receptacles and waste handling units for refuse shall be thoroughly cleaned in a way that does not contaminate equipment, devices, fixtures, linens, furnishings,

garments, or other supplies; and waste water shall be disposed of as specified in section 723.

910.2 Soiled receptacles and waste handling units for refuse shall be cleaned at a frequency necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.

910.3 Except as specified in section 910.4, suitable cleaning implements and supplies such as high-pressure pumps, hot water, steam, and detergent shall be provided as necessary for effective cleaning of receptacles and waste handling units for refuse.

910.4 If approved by the Department, off-premises-based cleaning services may be used if on-premises cleaning implements and supplies are not provided.

911 REFUSE – REMOVAL RECEPTACLES OR VEHICLES

911.1 Refuse shall be removed from the premises by way of:

- (a) Portable receptacles that meet District law; or
- (b) A transport vehicle that is maintained and operated according to District law.

CHAPTER 10 LABELING AND IDENTIFICATION OF POISONOUS OR TOXIC MATERIALS

1000 ORIGINAL CONTAINERS – IDENTIFYING INFORMATION, PROMINENCE*

1000.1 Containers of poisonous or toxic materials and personal care items shall bear a legible manufacturer's label.

1001 WORKING CONTAINERS – COMMON NAME*

1001.1 Working containers used for storing poisonous or toxic materials, such as cleaners and sanitizers taken from bulk supplies shall be clearly and individually identified with the common name of the material.

CHAPTER 11 OPERATIONAL SUPPLIES AND APPLICATIONS OF POISONOUS OR TOXIC MATERIALS

1100 STORAGE – SEPARATION*

1100.1 Poisonous or toxic materials shall be stored and transported so they can not contaminate equipment, devices, fixtures, linens, furnishings, garments, or other supplies by:

- (a) Separating the poisonous or toxic materials by spacing or partitioning; and

- (b) Storing poisonous or toxic materials to prevent contamination of equipment, devices, fixtures, linens, furnishings, garments, or other supplies.

1101 PRESENCE AND USE – RESTRICTION*

- 1101.1 Restricted-use pesticides shall be applied only by a certified applicator as defined in section 2 of the Pesticide Operations Act of 1977, effective April 18, 1978 (D.C. Law 2-70; D.C. Official Code § 8-401).
- 1101.2 Only the following toxic materials may be for use in the massage establishment or health spa facility's operations:
 - (a) Chemicals required for maintaining clean and sanitary conditions;
 - (b) Chemicals necessary for plant and equipment maintenance and operation; and
 - (d) Chemicals necessary for use in the massage establishment or health spa facility's operations.
- 1101.3 Toxic cleaning compounds, sanitizing agents, and pesticide chemicals shall be identified, held, and stored in a manner that protects against contamination of equipment, devices, fixtures, linens, furnishings, garments, or other supplies as specified in this chapter.

1102 PRESENCE AND USE – CONDITIONS OF USE*

- 1102.1 Poisonous or toxic materials shall be used according to:
 - (a) The Pesticide Operations Act of 1977, effective April 18, 1978 (D.C. Law 2-70; D.C. Official Code § 8-401 *et seq.*), and these regulations;
 - (b) Manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state use is allowed in a massage establishment or health spa facility; and
 - (c) The conditions of certification, if certification is required, for use of the pest control materials.
- 1102.2 Poisonous or toxic materials shall be applied so that:
 - (a) A hazard to employees or other persons is not constituted;
 - (b) Contamination including toxic residues due to drip, drain, fog, splash, or spray on equipment, devices, fixtures, linens, furnishings, garments, or other supplies is prevented; and
 - (c) For restricted-use pesticides, contamination is prevented by:
 - (1) Removing items listed in paragraph (b);

- (2) Covering items listed in paragraph (b) with impermeable covers;
- (3) Taking other appropriate preventive actions; and
- (4) Cleaning and sanitizing equipment, devices, fixtures, linens, furnishings, garments, or other supplies after the application in accordance with these regulations.

1103 CONTAINER PROHIBITIONS – POISONOUS OR TOXIC MATERIAL CONTAINERS*

1103.1 A container previously used to store poisonous or toxic materials shall not be used to store, transport, or dispense equipment, devices, fixtures, linens, furnishings, garments, or other supplies.

1104 CHEMICALS – SANITIZERS, CRITERIA*

1104.1 Chemical sanitizers and other chemical antimicrobials as specified in section 501.3

1105 CHEMICALS – CLEANING COMPOUNDS, SANITIZERS*

1105.1 Cleaning compounds and sanitizing agents used in cleaning and sanitizing procedures shall be free from undesirable microorganisms and shall be safe and adequate under the conditions of use.

1105.2 Compliance with this requirement may be verified by effective means including, but not limited to, purchase of substances under a supplier's guarantee or certification, or examination of the substances for contamination.

1106 PESTICIDES – RESTRICTED USE PESTICIDES, CRITERIA*

1106.1 Restricted use pesticides shall meet the requirements specified in 40 CFR 152.170 – Criteria for restriction to use by certified applicators.

1107 PESTICIDES – RODENT BAIT STATIONS*

1107.1 Rodent bait shall be contained in a covered, tamper-resistant bait station.

1108 PESTICIDES – TRACKING POWDERS, PEST CONTROL AND MONITORING*

1108.1 A tracking powder pesticide may not be used in a massage establishment or health spa facility, except as specified in section 1108.2.

1108.2 If used, a nontoxic tracking powder such as talcum or flour may not contaminate equipment, devices, fixtures, linens, furnishings, garments, or other supplies.

1109 FIRST AID SUPPLIES – STORAGE*

1109.1 First aid supplies that are in a massage establishment or health spa facility for the employees' use shall be:

- (a) Labeled as specified in section 900 of these regulations; and
- (b) Stored in a kit or a container that is located to prevent the contamination of equipment, devices, fixtures, linens, furnishings, garments, or other supplies.

1110 OTHER PERSONAL CARE ITEMS – STORAGE

1110.1 Employees shall store their personal care items in separate cabinets or storage lockers specified in section 814.2, except as specified in section 1109.

**SUBTITLE D: COMPLIANCE, ENFORCEMENT,
AND DEFINITIONS**

CHAPTER 12 LICENSE TO OPERATE OR TRAIN

1200 LICENSE REQUIREMENT – PREREQUISITE FOR OPERATION*

1200.1 No person shall own, open, or operate a massage establishment or health spa facility, or provide access to massage services in the District without a valid massage establishment or health spa facility license issued by the Department.

1200.2 No person shall manage a massage establishment or health spa facility, or provide access to massage services in the District without a valid massage establishment license issued by the Department.

1200.3 No person shall manage a massage establishment or health spa facility, or provide access to massage services in the District without obtaining and carrying a valid District-issued Massage Establishment Manager Identification Card issued by the Department.

1200.4 No person shall render massage therapy services in or upon the licensed premises of a massage establishment or health spa facility in the District without a valid Massage Therapist license issued by the Department.

1200.5 No person shall render massage therapy services in or upon the licensed premises of a massage establishment or health spa facility for compensation without obtaining and carrying a valid District-issued Massage Therapist Identification Card issued by the Department.

1200.6 A massage establishment or health spa facility shall obtain a separate food establishment license or swimming pool/spa license issued by the Department for

any food establishment or any swimming pool/spa that is operating at the same address or on the same premises.

1200.7 Massage establishments or health spa facilities that offer food on the premises shall comply with all applicable provisions of the District's Food Code Regulations, Title 25 of the District of Columbia Municipal Regulations and section 1200.6.

1200.8 Massage establishments or health spa facilities that offer food on the premises shall comply with all applicable provisions of the District's Swimming Pools and Spas Regulation, Title 22, Chapter 64 of the District of Columbia Municipal Regulations and section 1200.6.

1201 APPLICATION PROCEDURE – PERIOD FOR SUBMISSION

1201.1 An applicant shall submit an application for a license at least thirty (30) calendar days before the date planned for opening a massage establishment or health spa facility or the expiration date of the current license for an existing facility.

1201.2 Licenses shall be valid for a one (1) year period.

1201.3 License fees shall be prorated for licenses issued after beginning of the license period.

1202 APPLICATION PROCEDURE – FORM OF SUBMISSION, PROCESSING

1202.1 An applicant shall submit a written application for a license on a form provided by the Department.

1202.2 A new application shall be filed with the Department within thirty (30) days of any change in ownership or location.

1202.3 The Department shall not process applications for a change in ownership or location where administrative actions are pending against an existing facility that has not been resolved.

1203 APPLICATION PROCEDURE – DEPARTMENT OF HEALTH AND THE METROPOLITAN POLICE DEPARTMENT, REVIEWS AND APPROVALS*

1203.1 The Department, with the assistance of the D.C. Metropolitan Police Department shall review each application to verify the application and the applicant's qualifications as specified in sections 1204, 1206, 1207, 1208, and 1209.

1204 APPLICATION PROCEDURE – CONTENTS OF THE APPLICATION PACKET

1204.1 An application for a license to operate a massage establishment or health spa facility shall include the full name, address, and signature of the applicant, and the following information:

- (a) The full and true name(s) or any other name(s) used by each applicant (hereinafter all provisions which refer to applicant include an applicant which may be a partnership or corporation);
- (b) The present address and telephone number and social security number of each applicant:
 - (1) If the applicant is a corporation, the names and residence addresses of each of the officers and directors of said corporation and each stock holder owning more than ten percent (10%) of the stock of the corporation and the address of the corporation itself if it is different from the address of the massage establishment or health spa facility; or
 - (2) If the applicant is a partnership, the names and residence addresses of each partner, including limited partners and the address of the partnership itself if it is different from the address of the massage establishment or health spa facility.
- (c) Name and jurisdiction of registered agent, if applicable;
- (d) The location, mailing address and all telephone numbers where the business is to be conducted;
- (e) The two (2) previous addresses immediately prior to the present address of the applicant;
- (f) Proof that the applicant is at least the age of majority;
- (g) Proof of good health required by the Department;
- (h) One photograph of each applicant at least two inches by two inches (2"x 2"), fingerprints, and a list of the applicant's occupation or employment for the three (3) years immediately preceding the date of the application;
- (i) Driver's license or Government ID and the date of birth of each applicant;
- (j) Evidence of legal presence and employability in the United States, if the applicant is not a United States citizen;
- (k) The massage or similar business history of each applicant; whether such person, in previously operated in the District or another city, county or state:
 - (1) Has had a business license suspended or revoked;
 - (2) The reason for the suspension or revocation; and
 - (3) The business activity or occupation subsequent to such action of suspension or revocation.

- (l) Proof that the applicant has not been convicted of, pled guilty or nolo contendere to, or served any term of probation as a result of being charged with:
 - (1) A felony;
 - (2) A crime involving moral turpitude;
 - (3) Violation of a controlled dangerous substances law; or
 - (4) Violation of any law regulating the practice of a health occupation;
- (m) The name and address (non-business address) of each manager, massage therapist, and ancillary employee who are or will be employed in the massage establishment or health spa facility;
- (n) A description of any other business to be operated on the same premises or on adjoining premises owned or operated by the applicant;
- (o) Authorization for the Department to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the license;
- (p) Such other identification and information necessary to verify the truth of the information provided in the application.
- (q) A complete set of construction plans including all schedules, e.g., floor plans, elevations, electrical schematics, etc; and.
- (r) Proof of ownership or lease agreement for the property and buildings on which the massage establishment or health spa facility will be built or operated. If an applicant for a massage establishment or health spa facility license does not own the building where the establishment or facility would be located, the building owner shall submit to the Department a notarized statement approving the use of the building as a massage establishment or health spa facility.

1205 DENIAL OF APPLICATION FOR LICENSE – NOTICE

1205.1 If an application for a license or a renewal of a license is denied, the Department shall provide the applicant with written notice that includes:

- (a) The specific reasons and legal authority for denial of the license;
- (b) The actions, if any, that the applicant must take to qualify for a new license or to renew a license; and
- (c) Notice of the applicant's right to a hearing and the process and timeframes for appeal as prescribed in chapter 18.

1206 ISSUANCE OF LICENSE – NOTICE OF OPENING, DISCONTINUANCE OF OPERATION, AND POSTING

- 1206.1 A massage establishment or health spa facility shall provide notice to the Department of its intent to operate at least thirty (30) calendar days before beginning operations.
- 1206.2 A massage establishment or health spa facility shall provide notice to the Department of its intent to shut down permanently or temporarily at least thirty (30) calendar days before discontinuing operations.
- 1206.3 If a massage establishment or health spa facility is closed for more than a thirty (30) day period, the massage establishment or health spa facility license and certificate of occupancy shall be returned to the Department and the owner shall be required to submit a new application as specified in section 1204 for the issuance of a new license prior to reopening.
- 1206.4 All licenses, Certificate of Occupancy, and current inspection reports shall be conspicuously posted within the massage establishment.

1207 ISSUANCE OF LICENSE – NEW OR EXISTING ESTABLISHMENTS, OR CHANGE OF OWNERSHIP OR LOCATION

- 1207.1 Each applicant shall:
- (a) Submit a properly complete an application packet provided by the Department;
 - (b) Submit a copy of any other operating and safety procedures unique to facility's operation;
 - (c) Submit certification that the applicant has read and understands the requirements of these regulations. Such certification shall be signed and dated by the manager and the owner of the massage establishment or health spa facility;
 - (d) Pay the application and license fees;
 - (e) Submit proof of the Department's review and approval of required plans and specifications as specified in section 1208; and
 - (f) Submit proof of the a preoperational inspection as specified in section 1209 has been conducted and shows the operation is built or remodeled in accordance with the approved plans and specifications and that the operation is in compliance with these regulations.
- 1207.2 If the applicant meets the qualifications as specified in section 1207.1 and the Department determines through its inspection as specified in section 1209 that the

operation is in compliance with these regulations, the Department shall approve DCRA's issuance of:

- (a) A new license to a new massage establishment or health spa facility;
- (b) A new license to an existing massage establishment or health spa facility that has changed ownership or location; or
- (c) A renewal license to an existing massage establishment or health spa facility.

1208 ISSUANCE OF LICENSE – REQUIRED PLAN REVIEWS AND APPROVALS

1208.1 A license applicant or licensee shall submit to the Department for review and approval properly prepared plans and specifications before:

- (a) The construction of a massage establishment or health spa facility;
- (b) The conversion of an existing structure for use as a massage establishment or health spa facility; or
- (c) Major renovation, remodeling or alteration of a massage establishment or health spa facility if the Department determines that plans and specifications are necessary to ensure compliance with these regulations.

1208.2 Plans required by this section shall include specifications showing layout, arrangement, and construction materials, and the location, size, and type of fixed equipment and facilities.

1208.3 Plans, specifications, an application form, and the applicable fee, shall be submitted at least thirty (30) calendar days before beginning construction, remodeling, or conversion of a massage establishment or health spa facility.

1208.4 The Department shall approve the completed plans and specifications if they meet the requirements of these regulations, and the Department shall report its findings to the license applicant or licensee within thirty (30) days of the date the completed plans are received.

1208.5 Plans and specifications that are not approved as submitted shall be changed to comply or be deleted from the project.

1209 ISSUANCE OF LICENSE – REQUIRED INSPECTIONS, PREOPERATIONAL, CONVERSIONS, AND RENOVATIONS*

1209.1 The Department shall conduct one (1) or more preoperational inspections to verify and approve that the massage establishment or health spa facility is constructed and equipped in accordance with plans and modifications approved by the Department as specified in section 1208; has established standard operating procedures as specified in section 300; and is in compliance with these regulations.

1210 CONDITIONS OF RETENTION – RESPONSIBILITIES OF THE LICENSEE

- 1210.1 Upon receipt of a license issued by the Department, the licensee, in order to retain the license shall comply with sections 1210.2 through 1210.7.
- 1210.2 The licensee shall post a current license, valid Certificate of Occupancy, and a current inspection results in a conspicuous location within the massage establishment or health spa facility as specified in section 1206.3.
- 1210.3 The licensee shall comply with the provisions of these regulations and approved plans as specified in section 1208.
- 1210.4 The licensee shall immediately discontinue operations and notify the Department if an imminent health hazard exists as specified in section 1306.
- 1210.5 The licensee shall allow representatives of the Department access to its massage establishment or health spa facility as specified in section 1300.
- 1210.6 The licensee shall replace existing operating systems, equipment, devices, fixtures, or furniture that do not comply with these regulations pursuant to a documented agreement with the Department requiring the operating systems, or equipment, devices, or fixtures, furniture be replaced with an operating system, or equipment, devices, fixtures, linens, furniture that comply with these regulations, except the Department may direct the replacement of existing operating systems, or equipment, devices, fixtures, or furniture because the equipment, devices, fixtures, or furniture constitute a public health hazard or nuisance.
- 1210.7 The licensee shall not engage any person to provide or administer massage services as specified in sections 1200.4 and 1200.5 until such person provides evidence that he possesses a current massage therapist license issued by the Department to provide such services in accordance with these regulations.

1211 CONDITIONS OF RETENTION – LICENSE NOT TRANSFERABLE*

- 1211.1 A massage establishment or health spa license shall not be transferred from one person to another person or from one location to another.

**CHAPTER 13 INSPECTION AND CORRECTION
OF VIOLATIONS****1300 ACCESS & INSPECTION FREQUENCY – DEPARTMENT RIGHT OF
ENTRY, DENIAL MISDEMEANOR***

- 1300.1 The Department shall determine a massage establishment or health spa facility's compliance with these regulations by conducting on-site:

- (a) Preoperational inspections;

- (b) Unannounced routine annual and follow-up inspections; and
 - (c) Unannounced complaint generated inspections.
- 1300.2 After representatives of the Department present official credentials and provide notice of the purpose and intent to conduct an inspection in accordance with these regulations, the applicant, or licensee shall allow the Department access to any part, portion or area of a massage establishment or health spa facility.
- 1300.3 The Department may enter and inspect all aspects of a massage establishment or health spa facility, including, but not limited to massage therapy rooms, locker rooms, bathrooms, gym/exercise rooms, employee lounge areas, kitchens/food service facilities, or other areas of a massage establishment or health spa facility for the following purpose:
- (a) To determine if the massage establishment or health spa facility is in compliance with these regulations;
 - (b) To investigate an emergency affecting the public health if the massage establishment or health spa facility is or may be involved in the matter causing the emergency; and
 - (c) To investigate, examine and sample/swab equipment, devices, fixtures, linens, furnishings, garments, or other supplies.
- 1300.4 If a person denies the Department access to any part, portion, or area of a massage establishment, the Department shall inform the individual that:
- (a) The applicant or licensee is required to allow access to the Department as specified in section 1300.2;
 - (b) Access is a condition of the receipt and retention of a license as specified in section 1210.5;
 - (c) If access is denied, an inspection order allowing access may be obtained in accordance with District law; and
 - (d) The Department is making a final request for access.
- 1300.5 If the Department presents credentials and provides notice as specified in section 1300.2, explains the authority upon which access is requested, and makes a final request for access as specified in section 1300.4(d), and the applicant, or licensee continues to refuse access, the Department shall provide details of the denial of access on the inspection report.
- 1300.6 If the Department is denied access to a massage establishment or health spa facility for an authorized purpose, after complying with sections 1300.2 through 1300.4, the Department may:

- (a) Summarily suspend a license to operate a massage establishment or health spa facility in accordance with section 1608;
- (b) Revoke or suspend a license to operate a massage establishment or health spa facility in accordance with section 1613; or
- (c) Request that the Office of the Attorney General for the District of Columbia commence an appropriate civil action in the Superior Court of the District of Columbia to secure a temporary restraining order, a preliminary injunction, a permanent injunction, or other appropriate relief from the court, to enforce these regulations in accordance with the Health Functions Clarification Act of 2002, effective October 3, 2001, (D.C. Law 14-28; D.C. Official Code § 7-731(b)) (2008 Repl.), as amended.

1301 REPORT OF FINDINGS – DOCUMENTING INFORMATION AND OBSERVATIONS

1301.1 The Department shall document on an inspection report form:

- (a) Administrative information about the massage establishment or health spa facility's legal identity, street and mailing addresses, inspection date, and other information such as status of the license and personnel certificates that may be required; or other inspectional findings; and
- (b) Specific factual observations of violations of these regulations that require correction by the licensee including:
 - (1) Nonconformance with critical items of these regulations; or
 - (4) Failure of a licensee to correct cited violations, as specified in section 1302.

1302 REPORT OF FINDINGS – SPECIFYING TIME FRAME FOR CORRECTIONS

1302.1 The Department shall specify on the inspection report form the time frame for correction of violations as specified in sections 1308 and 1310.

1303 REPORT OF FINDINGS – ISSUING REPORT AND OBTAINING ACKNOWLEDGMENT OF RECEIPT

1303.1 At the conclusion of the inspection, the Department shall provide a copy of the completed inspection report and the notice to correct violations to the licensee and request a signed acknowledgment of receipt. The inspection report shall contain a listing of violations by area in the operation and inspection item with corresponding citations to applicable provisions of these regulations.

1304 REPORT OF FINDINGS – REFUSAL TO SIGN ACKNOWLEDGMENT

1304.1 The Department shall inform a person who declines to sign an acknowledgment of receipt of inspection findings that:

- (a) An acknowledgment of receipt is not an agreement with the finding;
- (b) Refusal to sign an acknowledgment of receipt will not affect the licensee's obligation to correct the violations noted in the inspection report within the time frames specified; and
- (c) A refusal to sign an acknowledgment of receipt will be noted in the inspection report for the massage establishment or health spa facility.

1305 DEPARTMENT RECORDS REQUIREMENTS

1305.1 The Department shall keep and maintain a record of each inspection made of a massage establishment or health spa facility within the District for a period of three (3) years.

1305.2 The Department shall maintain annual records of the following information:

- (a) Total number of licensed massage establishments and health spa facilities;
- (b) Number of inspections;
- (c) Number of reinspections;
- (d) Number of hearings;
- (e) Number of license suspensions;
- (f) Number of license revocations;
- (g) Number and types of equipment, devices, fixtures, linens, furnishings, garments, or other supplies that did not meet the requirements of these regulations and were officially tagged or marked subject to condemnation orders; and
- (h) Number of general complaints investigated or injuries alleged and the outcomes.

1306 IMMEDIATE HEALTH HAZARD – CEASING OPERATIONS AND EMERGENCY REPORTING

1306.1 The Department shall summarily suspend operations, or a licensee shall immediately discontinue operations and notify the Department whenever any of the following conditions occur:

- (a) Operating with extensive fire damage that affects the massage establishment or health spa facility's ability to comply with these regulations;
- (b) Operating with serious flood damage that affects the massage establishment or health spa facility's ability to comply with these regulations;
- (c) Operating with loss of electrical power to critical systems, including but not limited to lighting, heating, cooling, or ventilation controls for a period of two (2) or more hours;
- (d) Operating with no hot water, or an unplanned water outage, or the water supply is cut off in its entirety for a period of one (1) or more hours in violation of sections 605, 606, and 702.1;
- (e) Operating with inadequate water pressure to any part of the massage establishment or health spa facility;
- (f) Operating with insufficient water capacity to any part of the massage establishment or health spa facility;
- (g) The massage establishment or health spa facility's use of a water supply that is not approved by the Department;
- (h) Operating with a defect or condition that exists in the plumbing system supplying potable water that may result in the contamination of the water;
- (i) Operating with a sewage backup or sewage that is not disposed of in an approved and sanitary manner;
- (j) Operating with a cross-connection between the potable water and non-potable water distribution systems, including but not limited to landscape irrigation, air conditioning, heating, and/or fire suppression system.
- (k) Operating with a back siphonage event;
- (l) Operating with toilet and/or handwashing facilities that are not properly installed;
- (m) Operating with the presence of toxic or noxious gases, vapors, fumes, mists or particulates in concentrations immediately dangerous to life or health, or in

concentrations sufficient to cause an environmental disease or public nuisance;

- (n) Operating with the presence of any unapproved pesticide residues in the interior building areas of a massage establishment or health spa facility, in food storage or service areas contained within the massage establishment or health spa facility, or in the presence of any food in the establishment; or in the presence of excessive restricted-use pesticide in any outdoor area of a massage establishment; or any evidence of the indiscriminate use of a pesticide or herbicide which may be injurious to the health of humans;
- (o) Operating with the presence of any disease-causing organism in water exposed to the atmosphere which has caused or is likely to cause an environmental disease in the massage establishment or health spa facility;
- (p) Operating with equipment that by condition, design, construction or use poses an immediate risk of entrapment, fall, puncture, pinch, crush, trip, or other cause of injury;
- (q) Operating with environmental surfaces, including but not limited to equipment, furnishings, beds, mattresses, mats, massage tables, pillows, linens, robes, garments, chairs or other items within any room of a massage establishment or health spa facility that are stained with blood or bodily fluids, or soiled; or infested with vermin; or are in an otherwise unsanitary condition;
- (r) Operating with any unmitigated biohazardous event that simultaneously involves more than one (1) customer, massage therapy room or a public area exceeding two hundred square feet (200 sq. ft.);
- (s) Operating with gross insanitary occurrence or condition that may endanger public health including but not limited to an infestation of vermin;
- (t) Operating with incorrect hot water temperatures that cannot be corrected during the course of the inspection in violation of section 702.1;
- (u) Operating with the presence and use of any used bedding which has not been sterilized or disinfected in violation of D.C. Official Code § 8-502(4), including the presence or use of any used bedding discarded and then recovered from a dumpster, trash room, alleyway, landfill, dump, junkyard, or hospital; or
- (v) Failing to minimize the presence of insects, rodents, or other pests on the premises in violation of section 821 (a) through (d).

1306.2 In addition to the imminent health hazards identified in section 1306.1, the Department shall summarily suspend operations if it determines through an inspection, or examination of records or other means as specified in 1300(a) through (c) the existence of any other condition which endangers the public health, safety, or welfare, including but not limited to:

- (1) Operating a massage establishment or health spa facility without a required license in violation of section 1200.1;
- (2) Operating a massage establishment or health spa facility with an expired license in violation of section 1200.1;
- (3) Operating without a valid Certificate of Occupancy;
- (4) Operating a massage establishment or health spa facility for clandestine drug laboratories and related activities;
- (5) Operating a massage establishment or health spa facility for prostitution;
- (6) Failure of licensee to employ a massage therapist who is licensed in the District in violation of section 200.1;
- (7) Failure of licensee to employ a manager of a massage establishment or health spa facility who is on the premises during all hours of operation in violation of section 200.2
- (8) Failure of licensee to employ a massage therapist who is on the premises during all hours of operation in violation of section 200.3;
- (9) Operating a massage establishment or health spa facility with six (6) or more critical violations that cannot be corrected on site during the course of the inspection;
- (10) Failing to allow access to DOH representatives during the massage establishment or health spa facility's hours of operation and other reasonable times as determined by DOH in violation of section 1300.4;
- (11) Hindering, obstructing, or in any way interfering with any inspector or authorized DOH personnel in the performance of his or her duty; or
- (12) Operating in violation of any provision specified in sections 1700, 1701, or 1702.

1307 IMMEDIATE HEALTH HAZARD – RESUMPTION OF OPERATIONS

- 1307.1 If operations are discontinued as specified in section 1306 or otherwise according to applicable D.C. laws and regulations, the licensee shall obtain approval from the Department before resuming operations.
- 1307.2 The Department shall determine whether a licensee needs to discontinue operations that are unaffected by the imminent health hazard in a massage establishment or health spa facility as determined by the Department or other District agency.

1308 CRITICAL VIOLATIONS – TIME FRAME FOR CORRECTION*

1308.1 A licensee shall at the time of inspection, correct a critical violation of these regulations and implement corrective action as specified in section 1308.2.

1308.2 The Department may consider the nature of the potential hazard involved and the complexity of the corrective action needed and agree to specify a longer timeframe, not to exceed five (5) business days after the inspection, for the licensee to correct a critical violation of these regulations.

1308.3 Failure to correct violations in accordance with this section may subject a licensee to a condemnation order pursuant to section 1602, summary suspension of a license pursuant to section 1608, revocation or suspension of a license pursuant to section 1613, civil penalties pursuant to section 1614, and judicial remedies pursuant to section 1616.

1309 CRITICAL VIOLATIONS— VERIFICATION AND DOCUMENTATION OF CORRECTION

1309.1 After observing at the time of inspection a correction of a critical violation, the Department shall enter the violation and information about the corrective action on the inspection report.

1309.2 After receiving notification that the licensee corrected a critical violation, the Department shall verify correction of the violation, document the information on an inspection report, and enter the report in the Department's records.

1310 NONCRITICAL VIOLATIONS – TIME FRAME FOR CORRECTION

1310.1 The licensee shall correct noncritical violations by a date and time agreed to or specified by the Department but no later than fourteen (14) business days after the inspection, except as specified in section 1310.2.

1310.2 The Department may approve a compliance schedule that extends beyond the time limits specified in section 1310.1 if the licensee submits a written schedule of compliance and no health hazard exists or will result from allowing an extended schedule for compliance.

1310.3 Failure to correct violations in accordance with this section may result in the revocation or suspension of a license pursuant to section 1613, issuance of civil penalties pursuant to section 1614, and the imposition of judicial remedies pursuant to section 1616.

1311 REQUEST FOR REINSPECTION

1311.1 If a license is summarily suspended pursuant to section 1608 or suspended or revoked pursuant to section 1613 because of violations of these regulations, the

licensee shall submit a written request for reinspection and pay the required reinspection fee.

1311.2 Upon receipt of a request for reinspection, the Department shall perform the reinspection of the massage establishment or health spa facility within three (3) business days of receipt of the request.

1311.3 A massage establishment or health spa facility shall not resume operations or remove from public view any warning or current inspection results as specified in sections 200.12 and 1204.3 until the Department has reinspected the massage establishment or health spa facility and certified that it is in compliance with these regulations.

CHAPTER 14 PREVENTION OF HEALTH HAZARDS

1400 PREVENTING HEALTH HAZARDS – PROVISION FOR CONDITIONS NOT ADDRESSED

1400.1 If necessary to protect against public health hazards or nuisances, the Department may impose specific requirements in addition to the requirements contained in these regulations that are authorized pursuant to An Act To authorize the Commissioners of the District of Columbia to make regulations to prevent and control the spread of communicable and preventable diseases, approved August 11, 1939 (53 Stat. 1408; D.C. Official Code §7-131).

1400.2 The Department shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to a license applicant or licensee and a copy shall be maintained in the Department's file.

1401 INVESTIGATION AND CONTROL – OBTAINING INFORMATION, ILLNESSES

1401.1 When the Department has probable cause to believe that a licensee, manager, or employee of a massage establishment or health spa facility is suspected of transmitting a contagious disease; is infected with a disease in a communicable form that is transmissible through bloodborne or skin pathogen; is a carrier of an infectious agent that causes a disease that is transmissible through bloodborne or skin pathogen; or is affected with a boil, an infected wound, or acute respiratory infection, as specified in section 1400.1, the Department shall:

- (a) Secure a confidential medical history of the a licensee, manager, or employee suspected of transmitting a contagious disease or making other investigations as deemed appropriate; and
- (b) Require appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected a licensee, manager, or employee.

1401.2 If the Department has reasonable suspicion that a disease has been transmitted by a licensee, manager, or employee in the course of performing a massage therapy session, the Department shall conduct an investigation or examination as appropriate and take action as needed to protect and preserve the public health as specified in section 1400.1.

- (a) Exclusion of the employee from the massage establishment or health spa facility as specified in chapter 4; or
- (b) The immediate closure of the massage establishment or health spa facility as specified in section 1306.

1402 INVESTIGATION AND CONTROL — RESTRICTION OR EXCLUSION OF LICENSEE, MANAGER, OR EMPLOYEE OR SUMMARY SUSPENSION OF LICENSE

1402.1 Based on the findings of an investigation related to a licensee, manager, employee or customer who is suspected of being infected or diseased, or a carrier of an infectious agent that causes a disease that is transmissible through bloodborne or skin pathogens, the Department may issue an order to the suspected licensee, manager, employee or instituting one (1) or more of the following control measures:

- (a) Restricting the licensee, manager, or employee;
- (b) Excluding the licensee, manager, or employee; or
- (c) Closing the massage establishment or health spa facility by summarily suspending a license to operate in accordance with these regulations.

1403 INVESTIGATION AND CONTROL — RESTRICTION OR EXCLUSION ORDER

1403.1 Based on the findings of the investigation as specified in section 1401 and to control disease transmission, the Department may issue an order of restriction or exclusion to a suspected licensee, manager, or employee without prior warning, notice of a hearing, or a hearing if the order:

- (a) States the reasons for the restriction or exclusion that is ordered;
- (b) States the evidence that the a licensee, manager, or employee shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated;
- (c) States that the suspected a licensee, manager, or employee may request a hearing by submitting a timely request as specified in chapter 18; and
- (d) Provides the name and address of the Department representative to whom a request for a hearing may be made.

1404 INVESTIGATION AND CONTROL – REMOVAL OF EXCLUSIONS AND RESTRICTIONS

1404.1 The Department shall release a licensee, manager, or employee from restriction or exclusion as specified in section 406.

CHAPTER 15 NOTICES**1500 SERVICE OF NOTICE – PROPER METHODS**

1500.1 A notice issued in accordance with section 3102 of Title 16 of the District of Columbia Municipal Regulations and these regulations shall be deemed properly served if it is served by one of the following methods:

- (a) The notice is personally served by the Department, a law enforcement officer, or person authorized to serve civil process and service is made to the licensee, or person operating a massage establishment or health spa facility without a license;
- (b) The notice is sent by the Department to the last known address of the licensee, or person operating a massage establishment or health spa facility without a license by other public means so that a written acknowledgment of receipt may be acquired; or
- (c) For civil infraction penalties, the notice is provided by the Department in accordance with the procedures stated in section 3102 of Title 16 of the District of Columbia Municipal Regulations.

1501 SERVICE OF NOTICE – RESTRICTION OR EXCLUSION, CONDEMNATION, OR SUMMARY SUSPENSION ORDERS

1501.1 An employee restriction or exclusion order, condemnation order or a summary suspension order shall be:

- (a) Served as specified in section 1500.1(a); or
- (b) Clearly posted by the Department at a public entrance to the massage establishment or health spa facility and a copy of the notice sent by first class mail to the licensee, or to the manager of a massage establishment or health spa facility, as appropriate.

1502 SERVICE OF NOTICE – WHEN NOTICE IS EFFECTIVE

1502.1 Service is effective at the time of the notice's receipt or if service is made as specified in section 1501.1(b), at the time of the notice's posting.

1503 SERVICE OF NOTICE – PROOF OF PROPER SERVICE

1503.1 Proof of proper service may be made by certificate of service signed by the person making service or by admission of a return receipt, certificate of mailing, or a written acknowledgment signed by the licensee, the person operating a massage establishment or health spa facility without a license, or an authorized agent.

CHAPTER 16 REMEDIES**1600 CRITERIA FOR SEEKING REMEDIES – CONDITIONS WARRANTING REMEDY**

1600.1 The Department may seek an administrative or judicial remedy to achieve compliance with the provisions of these regulations if a licensee, or person operating a massage establishment or health spa facility, or employee:

- (a) Fails to have a valid license as specified in section 1200;
- (b) Fails to pay the required fee as specified in section 1205.3(d);
- (c) Violates any term or condition of a license as specified in section 1210;
- (d) Fails to allow the Department access to a massage establishment or health spa facility as specified in section 1300;
- (e) Fails to comply with directives of the Department including time frames for corrective actions specified in inspection reports, orders, or warnings issued by the Department as specified in sections 1308 and 1310;
- (f) Fails to comply with a condemnation order as specified in this chapter;
- (g) Fails to comply with a summary suspension order by the Department as specified in this chapter;
- (h) Fails to comply with an order issued as a result of an administrative hearing;
- (i) For any material false statement in the application for licensure;
- (j) For falsification or alteration of records required to be kept by these regulations;
- (k) For conditions revealed by the application or any report, records, inspection or other means which would warrant the Department refusal to grant a new license.

1600.2 The Department may simultaneously use one or more of the remedies listed in this chapter to address a violation of these regulations.

1601 ADMINISTRATIVE – EXAMINING, SAMPLING, AND TESTING OF EQUIPMENT, FURNITURE, DEVICES, FIXTURES, LINENS, & FURNISHINGS, AND USED BEDDING

1601.1 The Department may examine, collect samples, without cost, and test as necessary to determine compliance with these regulations.

1602 ADMINISTRATIVE – CONDEMNATION ORDER, JUSTIFYING CONDITIONS AND REMOVAL OF EQUIPMENT, OR DEVICE

1602.1 A duly authorized agent of the Department may condemn and forbid the sale of, or cause to be removed and destroyed, any equipment, or device found in a massage establishment or health spa facility the use of which does not comply with these regulations, or that is being used in violation of these regulations, or that because of dirt, filth, extraneous matter, corrosion, open seams, or chipped or cracked surfaces is unfit for use.

1603 ADMINISTRATIVE – CONDEMNATION ORDER, CONTENTS

1603.1 The condemnation order shall:

- (a) State that the equipment, devices, fixtures, linens, furnishings, garments, or other supplies subject to the order may not be used, sold, moved from the massage establishment or health spa facility, or destroyed without a written release of the order from the Department;
- (b) State the specific reasons for placing the equipment, devices, fixtures, linens, furnishings, garments, or other supplies under the condemnation order with reference to the applicable provisions of this Code and the hazard or adverse effect created by the observed condition;
- (c) Completely identify the equipment, devices, fixtures, linens, furnishings, garments, or other supplies subject to the condemnation order by the common name, the label or manufacturer's information, description of the item, the quantity, the Department's tag or identification information, and location;
- (d) State that the licensee has the right to a hearing and may request a hearing by submitting a timely request in accordance with chapter 18, which request does not stay the Department's imposition of the condemnation order;
- (e) State that the Department may order the destruction, replacement or removal of equipment, devices, fixtures, linens, furnishings, garments, or other supplies if a timely request for a hearing is not received; and
- (f) Provide the name and address of the Department representative to whom a request for a hearing may be made.

- 1604 ADMINISTRATIVE – CONDEMNATION ORDER, OFFICIAL TAGGING OR MARKING OF EQUIPMENT, OR DEVICE**
- 1604.1 The Department shall place a tag, label, or other appropriate marking to indicate the condemnation of equipment, devices, fixtures, linens, furnishings, garments, or other supplies that does not meet the requirements of these regulations.
- 1604.2 The tag or other method used to identify the equipment, devices, fixtures, linens, furnishings, garments, or other supplies that is the subject of a condemnation order shall include a summary of the provisions specified in section 1603 and shall be signed and dated by the Department.
- 1605 ADMINISTRATIVE – CONDEMNATION ORDER, EQUIPMENT, DEVICE MAY NOT BE USED OR MOVED**
- 1605.1 Equipment, devices, fixtures, linens, furnishings, garments, or other supplies that are subject to a condemnation order may not be used, sold, moved, or otherwise destroyed by any person, except as specified in section 1606.2.
- 1606 ADMINISTRATIVE – CONDEMNATION ORDER, REMOVING THE OFFICIAL TAG OR MARKING**
- 1606.1 No person shall remove the tag, label, or other appropriate marking except under the direction of the Department as specified in section 1606.2.
- 1606.2 The Department shall issue a notice of release from a condemnation order and shall remove condemnation tags, labels, or other appropriate markings from massage equipment, devices, fixtures, linens, furnishings, garments, or other supplies if:
- (a) The condemnation order is vacated; or
 - (b) The licensee notifies the Department that the massage equipment, devices, fixtures, linens, furnishings, garments, or other supplies.
- 1607 ADMINISTRATIVE – CONDEMNATION ORDER, WARNING OR HEARING NOT REQUIRED**
- 1607.1 The Department may issue a condemnation order to a licensee, or to a person who owns or controls the equipment, devices, fixtures, linens, furnishings, garments, or other supplies as specified in section 1501, without prior warning, notice of a hearing, or a prior hearing on the condemnation order.
- 1607.2 The licensee shall have the right to request a hearing within fifteen (15) business days of receiving a Department condemnation order. The Department shall hold a hearing within seventy-two (72) hours of receipt of a timely request, and shall issue a decision within seventy-two (72) hours after the hearing. The request for a hearing shall not act as a stay of the condemnation action.

1608 ADMINISTRATIVE – SUMMARY SUSPENSION OF LICENSE, CONDITIONS WARRANTING ACTION

1608.1 The Department may summarily suspend a license to operate a massage establishment or health spa facility if it is denied access to the massage establishment or health spa facility to conduct an inspection, or determines through an inspection, or examination of operators, employees, records, or other means as specified in the regulations, that an imminent health hazard exists.

1609 ADMINISTRATIVE – CONTENTS OF SUMMARY SUSPENSION NOTICE

1609.1 A summary suspension notice shall state:

- (a) That the license of a massage establishment or health spa facility is immediately suspended and that all operations shall immediately cease;
- (b) The reasons for summary suspension with reference to the provisions of this Code that are in violation;
- (c) The name and address of the Department representative to whom a written request for reinspection may be made and who may certify that reasons for the suspension are eliminated; and
- (d) That the licensee may request a hearing by submitting a timely request in accordance with section 1610, which request does not stay the Department's imposition of the summary suspension.

1610 ADMINISTRATIVE – SUMMARY SUSPENSION, WARNING OR HEARING NOT REQUIRED

1610.1 The Department may summarily suspend a license as specified in section 1608 by providing written notice as specified in section 1501 of the summary suspension to the licensee, without prior warning, notice of a hearing, or prior hearing.

1610.2 The licensee shall have the right to request a hearing within fifteen (15) business days after receiving the Department's summary suspension notice. The Department shall hold a hearing within seventy-two (72) hours of receipt of a timely request, and shall issue a decision within seventy-two (72) hours after the hearing. The request for a hearing shall not act as a stay of the summary suspension.

1611 ADMINISTRATIVE – SUMMARY SUSPENSION, TIME FRAME FOR REINSPECTION

1611.1 After receiving a written request from the licensee stating that the conditions cited in the summary suspension order no longer exist, the Department shall conduct a reinspection of the massage establishment or health spa facility for which the license was summarily suspended within three (3) business days of receiving the request.

1612 ADMINISTRATIVE – SUMMARY SUSPENSION, TERM OF SUSPENSION, REINSTATEMENT

1612.1 A summary suspension shall remain in effect until the conditions cited in the notice of suspension no longer exist and the Department has confirmed, through re-inspection or other appropriate means that the conditions cited in the notice of suspension have been eliminated.

1612.2 The suspended license shall be reinstated if the Department and the D.C. Metropolitan Police Department determine that the public health hazard or nuisance no longer exists. A notice of reinstatement shall be provided to the licensee.

1613 ADMINISTRATIVE – REVOCATION OR SUSPENSION OF LICENSE

1613.1 Failure to comply with any of the provisions of these regulations shall be grounds for the revocation or suspension of any license issued for a massage establishment or health spa facility pursuant to the Health Functions Clarification Act of 2002, effective October 3, 2001, (D.C. Law 14-28; D.C. Official Code § 7-731(b)) (2008 Repl.), as amended. When there is a history of repeated violations or where a license has been previously suspended, the Department may revoke a license, upon a showing of a subsequent violation.

1613.2 Before the Department revokes or suspends a license, the licensee shall be given an opportunity to answer and to be heard on the violations.

1614 ADMINISTRATIVE – CIVIL PENALTIES

1614.1 Civil fines, penalties, or related costs may be imposed against any massage establishment, owner or licensee, for violation of any provision of these regulations.

1614.2 The Department may impose penalties for violations of any provision of these regulations not to exceed \$10,000 for each violation. Each day of any failure to comply with these regulations shall constitute a separate offense and the penalties prescribed in this section shall apply to each separate offense in accordance with the Health Functions Clarification Act of 2002, effective October 3, 2001, (D.C. Law 14-28; D.C. Official Code § 7-731(b)) (2008 Repl.), as amended.

1614.3 Civil fines or penalties imposed pursuant to section 1614.2 shall reflect the severity of the violation and the extent to which it creates an imminent threat to the public health. Maximum amounts shall be limited to egregious or flagrant violations involving gross negligence or carelessness resulting in injury which do not meet the criminal penalty standards in section 1616.

1615 ADMINISTRATIVE – CIVIL PENALTIES, NOTICES OF VIOLATION OR INFRACTIONS

1615.1 The notice of violation shall state the nature of the violation and allow a reasonable time for performance of the necessary corrective action.

1615.2 If a person fails to comply with the time stated in the notice of violation issued pursuant to this section, the Department shall issue a proposed compliance order, or a proposed cease and desist order, which shall include a statement of the nature of the violation, afford the right to a hearing, allow a reasonable time for compliance with the order, and state any penalties to be assessed for failure to comply with the order.

1616 JUDICIAL – CRIMINAL PENALTIES, INJUNCTIVE RELIEF, IMPRISONMENT

1616.1 Any person who knowingly violates any provision of these regulations shall, upon conviction, be punished by a fine not to exceed ten thousand dollars (\$10,000), imprisonment not to exceed one (1) year, or both, for each violation. Each day of any failure to comply with these regulations shall constitute a separate offense and the penalties prescribed in this section shall apply to each separate offense in accordance with the Health Functions Clarification Act of 2002, effective October 3, 2001, (D.C. Law 14-28; D.C. Official Code § 7-731(b)) (2008 Repl.), as amended.

**CHAPTER 17 PROHIBITED CONDUCT
AND ACTIVITIES**

1700 PROHIBITED CONDUCT – ADVERTISEMENT AND POSTING*

1700.1 No person shall refer to the Department in any advertisement or posting that such person or such person’s establishment is licensed with the Department pursuant to these regulations.

1700.2 No person shall state or imply that any activity conducted by such person or such person’s establishment has been approved by the Department.

1700.3 No person shall claim in any advertisement or posting any medical or health benefits from such person’s massage therapy services, nor imply use of services as a medical treatment.

1700.4 No person or facility shall advertise or promote massage therapy service packages labeled as “unlimited”.

1700.5 No person or facility shall advertise or promote massage therapy or health spa services with nude images, images of scantily clad persons, vulgarity, or with any sexual overtones.

1700.6 No person or facility shall advertise or promote massage therapy or health spa services that are misleading in any way.

1700.7 No person or facility shall advertise or promote services that are not massage therapy or health spa services.

- 1700.8 No person or facility shall advertise or promote massage or spa related services without the massage establishment or health facility's name, address, telephone number, and license number on the advertisement.
- 1700.9 Unless licensed to practice massage therapy in the District of Columbia as specified in section 200.1, no person or facility shall use or imply the use of words or terms "massage therapy", "therapeutic massage", "myotherapy", "bodyrub", or similar title or description of services, or use the initials "LMT" with the intent to represent that the person practices massage in accordance with the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code 3-1210.03(v) (2007 Repl.)).

1701 PROHIBITED ACTIVITIES*

- 1701.1 It shall be unlawful for any person who owns, operates or manages a massage establishment or health spa facility to knowingly cause, allow or permit in or about the establishment, location or facility any agent, employee or other person under his control or supervision to perform any of the acts specified in sections 1700, 1701 or 1701.2.
- 1701.2 No person in a massage establishment or health spa facility shall expose his or her own genitals, buttocks, chest or breasts, or any portion thereof, or cause to be exposed another person's genitals, buttocks, chest or breasts, or any portion thereof of another person to a customer or other person.
- 1701.3 No person other than a District licensed massage therapist shall touch a customer or provide massage therapy services in a massage establishment or health spa facility.
- 1701.4 No person in a massage establishment or health spa facility shall expose their genitals, pubic area, buttocks, chest or breasts for the purpose of soliciting prostitution or other sexual gratification.
- 1701.5 No massage establishment or health spa facility shall employ, in any capacity, any person who is under eighteen (18) years of age.
- 1701.6 No massage therapy shall be performed on a customer under eighteen (18) years of age without a medical referral and a parental consent form.
- 1701.7 No massage therapy shall be performed on a customer that is visibly or noticeably intoxicated with alcohol or otherwise under the influence of intoxicating substances, including legal and/or illegal drugs, which appear to be impairing good judgment by the customer at that time.
- 1701.8 No alcoholic beverages shall be served in a massage establishment or health spa facility.
- 1701.9 No person shall enter or remain in any part of a massage establishment or health spa facility while in possession of, consuming, or using any alcoholic beverage or drugs

except pursuant to a prescription for such drugs. The licensee or manager shall not permit any such person to enter or remain upon such premises.

- 1701.10 No massage establishment or health spa facility shall operate a school of massage, nor use the same facilities as that of a school of massage.
- 1701.11 It shall be unlawful for any person to perform any massage upon a member of the general public while on the premises of a school of massage. Instructors and students of such schools may practice massage therapy only upon a bona fide employee of the school or student. A dummy may be used.
- 1701.12 No massage therapy shall be performed on a customer that is contagious with a communicable disease. If a customer has a suspect skin affliction (skin fungus, infection, inflammation, eruption, or lesion) prior to massage therapy, the customer may provide to the massage therapist or establishment a written certificate from a medical professional stating that the skin condition is not communicable. Massage therapists are prohibited from *treating* cuts, wounds, or other such injuries, whether or not they are communicable.
- 1701.13 No massage therapy shall be performed by a massage therapist who is contagious with a communicable disease.

1702 PROHIBITED THERAPEUTIC TREATMENTS*

- 1702.1 The following therapeutic treatments are not within the scope of practice of a massage therapist and are expressly prohibited:
- (a) Therapeutic treatments to the anus and anal canal, including but not limited to colonic irrigations and enemas;
 - (b) Therapeutic cross-gender breast massage; or
 - (c) Therapeutic perineal or vaginal massage.

CHAPTER 18 HEARING ADMINISTRATION

1800 ADMINISTRATIVE — NOTICE, REQUEST FOR HEARING, BASIS AND TIME FRAME

- 1800.1 A person who receives a notice of hearing for an administrative remedy as specified in this chapter and elects to respond to the notice shall file a response to the notice within seven (7) calendar days after service.
- 1800.2 In response to an adverse administrative action, a licensee may submit a written request for a hearing to the Department within fifteen (15) calendar days of the receipt of notice of adverse action.

1800.3 A hearing request shall not stay the Department's restriction or exclusion of employees specified in sections 1401 and 1404, a condemnation order as specified in section 1602, or the imposition of a summary suspension as specified in section 1608.

1801 ADMINISTRATIVE – HEARINGS ADMINISTRATION – CONTENTS OF RESPONSE TO HEARING NOTICE, OR HEARING REQUEST

1801.1 A response to a hearing notice shall be in writing and contain the following:

- (a) An admission or denial of each allegation of fact;
- (b) A statement as to whether the respondent waives the right to a hearing;
- (c) A statement of defense, mitigation, or explanation concerning any allegation of fact if any;
- (d) A request to the Department for a settlement of the proceeding by consent agreement, (if the Department provides this opportunity); and
- (e) The name and address of the respondent's legal counsel, if any.

1801.2 A request for hearing shall be in writing and contain the following:

- (a) An admission or denial of each allegation of fact;
- (b) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact; and
- (c) The name and address of the requester's legal counsel, if any.

1802 ADMINISTRATIVE – HEARINGS ADMINISTRATION, TIMELINESS

1802.1 The Department shall afford a hearing within seventy-two (72) hours after receiving a written request for a hearing from:

- (a) A licensee or person who is subject to a condemnation order as specified in sections 1602; or
- (b) A person whose license is summarily suspended as specified in sections 1608.

1802.2 A licensee or person who submits a request for a hearing as specified in section 1800.2 may waive the expedited hearing in a written request to the Department.

CHAPTER 19 JUDICIAL REVIEW

1900 JUDICIAL REVIEW – APPEALS

1900.1 Any person aggrieved by a final order or decision of the Department may seek judicial review in accordance with the Health Functions Clarification Act of 2002, effective October 3, 2001, (D.C. Law 14-28; D.C. Official Code § 7-731(b)) (2008 Repl.), as amended.

2000 RESERVED

CHAPTER 99 DEFINITIONS

9900 GENERAL PROVISIONS

9900.1 The terms and phrases used in this title shall have the meanings set forth in this Chapter, unless the text or context of the particular chapter, section, subsection, or paragraph provides otherwise.

9901 DEFINITIONS

Acupressure – a method of stimulating acupuncture points by use of the hands or other instrument without piercing the skin.

Ancillary employees – all employees of a massage establishment or health spa facility including independent contractors (except the manager, or massage therapist) who work in the massage establishment or health spa facility but in no way touch the customer.

Board – the Board of Massage Therapy pursuant to the Qualified Massage Therapists Amendment Act of 1994, effective March 14, 1995, (DC Law 10-205; D.C. Official Code § 3-1202.15).

Biocide – an Environmental Protection Agency (EPA)-registered physical or chemical agent capable of killing microorganisms.

Biofilm – an assemblage of microbial cells attached to an environmental surface and enclosed in a matrix primarily composed of polysaccharides that is not easily removed by normal rinsing or water flow. Mineral crystals (scale), corrosion particles, clay or silt particles, may be present within or on the biofilm matrix.

Biohazard event – an event in which a biological agent, including pathogenic microorganisms and their toxins, causes a condition that may constitute a threat to human health and safety.

Biohazard Event Response Plan – a written plan developed by the business which contains detailed clean-up procedures by which massage establishment or health spa facility employees can safely disinfect potentially-contaminated environmental surfaces and control potential communicable disease outbreaks among customers and employees. The Biohazard Event Response Plan must also include procedures for which biohazard events are required to be reported to the Department and procedures for documenting response activities in a log book.

Chair massage – a massage administered by a massage therapist or independent massage therapist to a fully clothed customer’s neck, shoulders, back, arms, hands, and /or feet utilizing a massage chair.

Clean – free from visible dirt, dust, sludge, foam, slime (including algae and fungi), bodily excretions or secretions, rust, scale, mineral deposits, accumulation of impurities, and /or other foreign material.

Colonic irrigation – irrigation or flushing of the colon for cleansing purposes by injecting large amounts of fluid high into the colon. Synonyms include colonic hydrotherapy, high colonic, and purging. This is a prohibited act in a massage establishment or health spa facility or by a massage therapist.

Communicable disease – any disease:

- (a) Denominated a reportable disease pursuant to An Act To authorize the Commissioners of the District of Columbia to make regulations to prevent and control the spread of communicable and preventable diseases, approved August 11, 1939 (53 Stat. 1408; D.C. Official Code §7-131) (2008 Suppl), including any illness due to an infectious agent or its toxic product that is transmitted :
 - (1) Directly or indirectly to a well person from an infected person, animal, or ectoparasite; or
 - (2) Through the agency of an intermediate host or vector, or by exposure to chemical or radiological agents within the immediate environment; or
- (b) Occurring as an outbreak of illness or toxic conditions, regardless of etiology in an institution or other identifiable group of people.

Customer – any member of the public, other than a licensee, employee, massage therapist, or independent massage therapist, either paying or non-paying, who uses the services of a massage establishment or health spa facility and / or with whom a massage therapist has an agreement to provide massage therapy; or any individual who is provided access to a massage establishment or health spa facility which is required to be licensed pursuant to these regulations.

Critical item – a provision of these regulations that, if in noncompliance, is more likely than other violations to spread communicable diseases or creates environmental health hazards; critical items are denoted in this Code with an asterisk (*).

Critical violation – a condition or practice that violates these regulations that is less likely to spread communicable diseases or create environmental health hazards; noncritical items are denoted with a superscripted letter “N” following the provision.

Cross contamination – the transfer of harmful pathogenic microorganisms from dirty surfaces or equipment to previously sanitized or sterilized surfaces or, equipment, or products.

Department – the District of Columbia Department of Health.

Disinfect – to carry out a process that kills most or significantly reduces pathogenic microorganisms.

Disinfectant – an EPA-registered antimicrobial agent, such as a chemical, or heat that destroys, neutralizes, or inhibits the growth of pathogenic microorganisms. All chemical disinfectants must provide a strength equivalent to at least 50 ppm of free available chlorine at a pH of 7.0 to 7.6 in their normal use concentration.

Disposable article – an item which is made wholly or in part from a synthetic or other readily destructible material and which is intended to be discarded after a single use.

Drape – a towel, gown, sheet, blanket, or any similar item used to cover clients while massage therapy is being delivered.

Environmental Protection Agency (EPA)-Registered – any chemical or substances, including, sanitizers, sterilizers, biocides, or other substances, which must be registered with the United States EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) prior to their distribution and use by industry and consumers.

Environmental surface – the surface of any furniture, equipment, fixture, wall, floors, ceilings, bathtubs, showers or similar surface which is part of a massage establishment.

External bath – includes, but is not limited to, spas, showers, spa pools, tub baths, saunas and steam baths. Areas where external baths are given are considered spa bathrooms.

Fill-and-drain therapy whirlpool tub – a tub designed to re-circulate water through a mechanically-pumped self-contained system, and expel the water back into the tub or into targeted areas of the human body for therapeutic reasons, and is intended to be drained and sanitized after each individual customer's use.

Furniture – the movable articles in a lobby, massage therapy room, locker room or public area that make the area fit for its intended use. Furniture includes but is not limited to, tables, chairs, sofas, carpets, curtains, pictures, vases, mirrors, televisions and other electrical equipment, and appliances. Bedding and massage tables are not considered to be furniture.

Garment – a gown, robe, or other apparel that is provided to a customer of a massage establishment or health spa facility to maintain modesty of the specified anatomical area in an establishment.

Handwashing sink – a lavatory, a basin or vessel for washing, a wash basin, or a plumbing fixture especially placed for use in personal hygiene and designed for the washing of hands; and includes an automatic handwashing facility.

Hazard – a biological, chemical, or physical property that may cause an unacceptable consumer health risk.

Health care professional – a physician licensed to practice medicine, or if allowed by law, a nurse practitioner, physician assistant, or similar medical professional.

Health spa – any establishment providing physical exercise, physical fitness, weight control or figure reduction including the use of a whirlpool, weight lifting room, steam room, exercising room, or exercising or weight loss device.

Imminent health hazard – a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operations to prevent injury based on the number of potential injuries, and the nature, severity, and duration of the anticipated injury.

Independent massage therapist – a massage therapist who is not an employee of a massage establishment, who is a sole practitioner, and hires no employees. An independent massage therapist may work within a massage establishment or health spa facility while under contract to do so and must independently maintain all required licenses and certifications and District-issued Identification.

Individual – any human being.

Injury – bodily harm resulting from the use of a massage device which requires medical attention.

Inspection – an official examination or observation, including but not limited to tests, surveys, and monitoring to determine compliance with rules, regulations, Department orders, requirements, and conditions.

License – a permit issued by the Director that authorizes a person to operate a massage establishment or health spa facility.

Licensee – a person who is legally responsible for the operation of the massage establishment or health spa facility, such as the owner, the owner's agent, or other person, and who either possesses a valid license issued by the DCRA to operate a massage establishment or health spa facility, or is required to possess a massage establishment or health spa facility license.

Linens – includes sheets, mattress covers, blankets, pillows cases, drapes, towels, or any other similar item used to cover a massage table, mat, or mattress, or customer during a massage therapy session.

Manual – use of hands or body.

Massage – the treatment of the external parts of the human body for comfort or the general well-being of the body, consisting of rubbing, stroking, kneading, tapping or vibrating one or more parts of the body with hand, or any instrument, for compensation.

Massage chair – comes in two (2) main types: (1) traditional massage chairs are ergonomically designed for positioning a person who will be receiving a massage, similar in function to a massage table and (2) robotic massage chair that contains internal electronic motors and gears designed to massage the person sitting in them.

Massage establishment or health spa facility – any establishment in the city where massages are provided or administered, or which holds itself out to the public as a place where massages are provided or administered, including massage therapy areas within a hotel, resort hotel, health club, or fitness center; provided, that this definition shall not include a hospital, nursing home or medical clinic, a care facility, the office of a duly licensed physician, surgeon, physical therapist, chiropractor or osteopath, barbershop or a beauty salon.

Massage table – a table that is specifically designed to safely accommodate the comfort of a customer receiving massage therapy, as well as to provide the massage therapist a comfortable standing height and accessibility to all parts of the customer which will be massaged. Depending on the therapeutic modality used by the massage therapist, other surfaces such as a mat, mattress platform, or pad, may be used. For the purposes of these regulations, any similar surface on which massage therapy is performed shall be referred to as a massage table.

Massage techniques – any touching or pressure with the intent of providing healing or therapeutic benefits through soft tissue manipulation. Massage techniques include, but are not limited to, Rolfing, Neuromuscular Therapy, Shiatsu or acupressure, Trigger Point massage, Trager, Tui na, Reflexology, Thai Massage, deep tissue massage, Myofascial Release, Lymphatic Drainage, Craniosacral, Polarity, Reiki, Swedish Massage, and Therapeutic Touch. Massage techniques may be performed in any postural position, including seated massage and techniques performed on clothed clients.

Massage therapy – the performance of therapeutic maneuvers in which the practitioner applies massage techniques, including use of the hand or limb to apply touch and pressure to the human body through tapping, stroking, kneading, compression, friction, stretching, vibrating, holding, positioning, or causing movement of an individual's body to positively affect the health and well-being of the individual; as defined in D.C. Official Code § 3-1201.02(6B)(A); and

- (a) Includes the use of adjunctive therapies, which are defined as including the application of heat, cold, water, and mild abrasives; and
- (b) The term adjunctive therapies do not include galvanic stimulation, ultra sound, Doppler vascularizers, diathermy, transcutaneous electrical nerve stimulation, or traction.

Massage therapy room – a room, booth, partitioned section, enclosure or other area within a massage establishment or health spa facility where massage therapy can be performed; provides sufficiency privacy for customers to don and doff their drapes or garments without being viewed by other customers, employees, or the public by any means, including electronic means or mirrors; and have locks or other means that allow for easy entry and /or exit by the customer.

Mechanical – any tool or device that mimics or enhances the actions possible by the hands.

Medical professional – a licensed, certified or registered provider of health care such as a physician, physician assistant, osteopathic physician, advanced practitioner of nursing, registered nurse, podiatric physician, or a licensed hospital as the employer of any such person.

Minor – any individual less than eighteen (18) years of age.

Nuisance – anything which is injurious to health or offensive to the senses, so as to interfere with the comfort or endanger the health or safety of the public.

Outbreak – the occurrence of cases of a communicable disease in a community, geographic region or particular population at a rate in excess of that which is normally expected in that community, geographic region or particular population.

Pathogenic – the ability to produce disease.

Perineal massage – a technique used to increase the elasticity and tone of the perineal tissues in preparation for childbirth.

Person – an association, a corporation, individual, partnership, trustee, government or governmental subdivision, or other legal entity.

Personal hygiene items – articles such as bars of soap, bath gel, bubble bath, shampoo, conditioner, lotion, mouthwash, toothbrushes, toothpaste, cotton swabs, cotton balls, razors, shaving cream, emery boards, combs, brushes, tweezers, feminine hygiene products, powder, etc. which are used for personal cleanliness and /or grooming.

Public area – any area open to public view, whether indoors or outdoors to which the public has approved access, excluding individual massage therapy rooms, locker rooms, bathrooms, or restrooms at a massage establishment.

Recognized School (of massage) – any school or educational institution licensed to do business as a school or educational institution in the state where it is located which is recognized by the District and is accredited by one (1) or more of the following agencies:

- (a) The Accrediting Commission of Career Schools and Colleges of Technology;
- (b) The Accrediting Council for Continuing Education and Training;
- (c) The National Commission for Certifying Agencies (NCCA);
- (d) National Certification Board for Therapeutic Massage and Bodywork (NCBTMB);
- (e) The Commission on Massage Therapy Accreditation;
- (f) The Accrediting Bureau of Health Education Schools; or
- (g) Any other nationally recognized accrediting organization of similar stature, and which has for its purpose, the teaching of the theory, method, profession, and work of massage, including anatomy, ethics, hygiene, and physiology, and which requires the successful completion of an in-class course, typically a minimum of 500 hours, before the student shall be furnished with a diploma or certificate of graduation.

Refuse – solid waste not carried by water through the sewage system.

Sanitized – the treatment of equipment and surfaces that can be accessed by the public with a biocide by a process which has been approved by the Department as being effective in destroying pathogenic microorganisms of public health concern.

Sanitization – the effective bactericidal treatment of surfaces of equipment and devices by an EPA-registered product which provides a sufficient concentration of chemicals, allowing enough time to reduce the bacterial count, including pathogens, to a safe level. Chemical germicides that are registered with the EPA as hospital disinfectants, when used at recommended dilutions and directions, may be approved for sanitizing massage establishment or health spa facility equipment and devices.

Sauna – a bathroom or room, usually of wood, equipped for providing a bath that uses dry heat to induce perspiration, and in which steam is produced by pouring water on heated stones.

Seated massage – any massage provided to the human body while the massage recipient is seated, including massage and techniques performed on clothed clients.

Service animal – an animal such as a guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.

Soft tissue – skin, adipose, muscle, and myofascial tissues.

Spa – a pool primarily designed for therapeutic use which is not drained, cleaned or refilled for each user. The term includes units which employ hydroject circulation, hot water, cold water, mineral water, air induction bubbles or combinations of them.

Spa room – a room, including but not limited to a healing room, treatment room, or other similar name, that contain a spa pool, therapy whirlpool tub, bathtub, shower, sauna, steam room, or any combination of these, and may possibly include portions of or be adjoined to a locker room as well as a toilet and lavatory (restroom).

Specified anatomical areas – include the human genitals, pubic region, anus, or perineum of any person, or the vulva or breast of a female.

Steam room – a room designed to produce steam and heat to induce sweating, as in a steam bath or Turkish bath.

Sterilization – destruction of all forms of microbial life including and fungal spores.

Tub bath – a bath where the bather's body is dipped or soaked in a body of water. The water is then drained and the tub refilled for the next bather.

Used bedding – any mattress, box spring, cot, futon, bed sheet, mattress pad, blanket, bedspread, comforter, quilt, dust ruffle, pillow, pillow case, cushion, or other materials used in the filling of any of the above or similar articles which has been previously used prior to receipt by the responsible person in charge of a massage establishment.

All persons wishing to comment on these 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, NE 2nd Floor, Washington, D.C. 20002-3323. 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.

D.C. DEPARTMENT OF HUMAN RESOURCES**NOTICE OF PROPOSED RULEMAKING**

The Director, DCHR, with the concurrence of the City Administrator, pursuant to Mayor's Order 2008-92, dated June 26, 2008 and Mayor's Order 2007-95, dated April 18, 2007, and in accordance with the provisions of Title II of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004 (Act), effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 4-1501.01 *et seq.*) (2008 Repl.), hereby gives notice of the intent to adopt the following rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The Act established criminal background and traffic record checks requirements for District government employees providing direct services to children or youth in District government agencies considered "*covered child or youth services providers.*" **The purpose of these rules is to amend sections 419.5, 419.6 (b), and 499 of Chapter 4, Organization for Personnel Management, of Title 6 of the DCMR.** Specifically, the rulemaking amends section 419.5 to correct a typographical error; and amends subsection 419.6 (b) to state that when there is a discovery of charges with no clear disposition, the person with such charges shall have seven (7) business days to provide to the personnel authority the necessary information or documentation on the final disposition of the charge(s). In addition, section 499, *Definitions*, is being amended to add the term "*Disposition*" to the list of definitions contained in the chapter. Upon adoption, these rules will amend Chapter 4, Organization for Personnel Management, of Title 6 of the DCMR, published at 32 DCR 75 (January 4, 1985) and amended at 33 DCR 4447 (July 25, 1986), 51 DCR 928 (January 23, 2004), 51 DCR 11591 (December 24, 2004), 52 DCR 6646 (July 15, 2005), 55 DCR 724 (January 25, 2008), 55 DCR 8870 (August 15, 2008), and 56 DCR 004346 (June 5, 2009).

CHAPTER 4**ORGANIZATION FOR PERSONNEL MANAGEMENT**

Chapter 4 of Title 6 of the District of Columbia Municipal Regulations is amended as follows:

Subsection 419.5 is amended to read as follows:

419.5 The information obtained from a criminal background check shall not immediately disqualify or create a presumption against employment or volunteer status of an appointee, employee, or unsupervised volunteer with a criminal record, including a proscribed offense, unless the DCHR or independent personnel authority determine that because of such criminal record, the person would pose a present danger to children or youth that makes him or her unsuitable for employment or unsupervised voluntary service in a covered position. This determination shall be made based on the following seven (7) factors:

- (a) The specific duties and responsibilities necessarily related to the employment sought;

- (b) The bearing, if any, the criminal offense for which the appointee was previously convicted will have on his or her fitness or ability to perform one (1) or more of the duties or responsibilities of the position;
- (c) The time which has elapsed since the occurrence of the criminal offense;
- (d) The age of the appointee at the time of the occurrence of the criminal offense;
- (e) The frequency and seriousness of the criminal offense;
- (f) Any information produced by the appointee, or produced on his or her behalf, in regard to his or her rehabilitation and good conduct since the occurrence of the criminal offense; and
- (g) The public policy that is beneficial generally for ex-offenders to obtain employment.

Subsection 419.6 (b) is amended to read as follows:

- 419.6 (b) Provide written notice to the appointee or employee that he or she has seven (7) business days to provide to the DCHR or independent personnel authority the necessary information concerning the final disposition of the charge(s), including an appointee's/employee's parole or probation status, if applicable; and

Section 499 of Chapter 4 of the D.C. Personnel Regulations, Definitions, is amended to add the definition for the term "Disposition:"

Disposition - the court's final determination of a lawsuit or criminal charge.

Comments on these proposed regulations should be submitted, in writing, to Brender L. Gregory, Director, DCHR, 441 4th Street, NW, Suite 300 South, Washington, D.C. 20001, within thirty (30) days of the date of the publication of this notice. Additional copies of these proposed rules are available from the above address.

D.C. DEPARTMENT OF HUMAN RESOURCES**NOTICE OF PROPOSED RULEMAKING**

The Director of the D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2008-92, dated June 26, 2008; and in accordance with the provisions of Chapter X-A of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-610.51 *et seq.*) (2006 Repl.), hereby gives notice of the intent to adopt, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, the following proposed rules. **These rules amend Chapter 10, Executive Service, of Title 6 of the District of Columbia Municipal Regulations (DCMR)**, for the purpose of updating citations to the D.C. Official Code and other legal and regulatory citations and references to agencies' names throughout the chapter. Additionally, definitions of the terms "*Interim subordinate agency head*" and "*Acting subordinate agency head*" are being added in section 1000.8 of the chapter; and other minor amendments are being made throughout the chapter as necessary. Upon adoption, these rules will amend Chapter 10, Executive Service, of Title 6 DCMR, published at 28 DCR 1325 (March 27, 1981), and amended at 31 DCR 6494 (October 21, 1984); 32 DCR 2372 (April 26, 1985) (Public Notice); 47 DCR 6224 (August 4, 2000), 50 DCR 4254 (May 30, 2003), 50 DCR 6707 (August 15, 2003); and 51 DCR 9017 (September 17, 2004).

CHAPTER 10**EXECUTIVE SERVICE**

Chapter 10, Executive Service, of Title 6 of the District of Columbia Municipal Regulations, is amended to read as follows:

1000 EXECUTIVE SERVICE

- 1000.1 The Executive Service is established within the District government to ensure that each subordinate agency head appointed is of the highest quality; responsible for the effective and efficient management of subordinate agencies; and responsive to the needs of the residents of the District of Columbia and the goals of the District government.
- 1000.2 Appointments to Executive Service positions shall be made by the Mayor as provided by sections 1051 through 1063 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-610.51 *et seq.*).

- 1000.3 Employees appointed to the Executive Service shall serve at the pleasure of the Mayor, except as otherwise provided for by statute.
- 1000.4 Except in the case of an individual who meets the following criteria, any person who accepts appointment or is hired to fill a position in the Executive Service on or after October 1, 2002 shall become a domiciliary of the District of Columbia within one hundred eighty (180) days of the effective date of appointment and shall maintain District of Columbia domicile for the duration of appointment:
- (a) Any person who was an employee of the District of Columbia government on December 31, 1979, and who is still employed by the District of Columbia government without having had a break in service of one (1) workday or more since that date; or
 - (b) Pursuant to the provisions of § 7 of the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act, approved November 8, 1984 (P.L. 98-621; 98 Stat. 3376; 24 U.S.C. § 225e (b)), any former employee of the U.S. Department of Health and Human Services at St. Elizabeths Hospital who accepted employment with the District government without a break in service effective October 1, 1987, and who has not had a break in service since that date.
- 1000.5 Except as provided in section 1000.4 (a) and (b) of this section, any employee in the Executive Service who was hired prior to October 1, 2002, and who was required to be or become a bona fide resident of the District of Columbia within one hundred eighty (180) days of appointment and maintain such residency for the duration of appointment or forfeit employment shall continue to be bound by the residency requirement that was in effect before October 1, 2002.
- 1000.6 Failure to become a domiciliary of the District of Columbia within the required period of time and to maintain District of Columbia domicile pursuant to this section shall result in forfeiture of employment.
- 1000.7 Notwithstanding the provisions of sections 1000.4 through 1000.6 of this section, a person appointed as “Interim” or “Acting” subordinate agency head in the Executive Service shall not become subject to the domicile requirement until after confirmation by the Council and promulgation of a Mayor’s Order or the processing of the personnel action appointing him or her to the Executive Service position. Specifically, the person shall become a domiciliary of the District of Columbia within one hundred eighty (180) days from the date specified in the Mayor’s Order as the date of appointment, or from the effective date of the personnel action processed after Council confirmation to appoint him or her to the position, whichever action occurs first.

1000.8 For the purposes of this section and this chapter, the following terms shall have the meaning ascribed:

Interim subordinate agency head – an individual selected by the Mayor to hold a subordinate agency head position in the Executive Service on a provisional, temporary basis, until such time as the Mayor nominates an individual to serve as the subordinate agency head.

Acting subordinate agency head – an individual nominated by the Mayor to serve as subordinate agency head in the Executive Service, subject to the advice and consent of the Council of the District of Columbia (Council) in accordance with D.C. Official Code § 1-523.01. The individual nominated by the Mayor shall serve in the “Acting” capacity until his or her appointment is confirmed by the Council.

1000.9 The Director of the D.C. Office of Human Resources (DCHR) shall inform each Executive Service employee subject to the provisions of section 1000.7 of this section, in writing, of the exact date by which he or she shall meet the domicile requirement.

1001 EXECUTIVE SERVICE PAY PLAN

1001.1 The Executive Service Pay Schedule (“DX Schedule”) is divided into five (5) pay levels and is the basic pay schedule for positions in the Executive Service. Each pay level shall have a minimum and maximum range, established by the Mayor and subject to review and approval by the Council of the District of Columbia by resolution.

1001.2 The Mayor shall designate the appropriate pay level within the DX Schedule for each subordinate agency head position. The Director, DCHR, shall provide relevant criteria for consideration by the Mayor in designating the appropriate pay level for each subordinate agency head position. Criteria shall include but not be limited to the following:

- (a) Agency budget characteristics;
- (b) Agency workforce characteristics;
- (c) Complexity of agency mission and functions; and
- (d) Desired qualifications for, or the impact of the person on, the position.

1001.3 A person appointed to a position in the Executive Service shall be appointed at the pay level on the DX Schedule designated for that position, and shall receive a salary set at any amount within the salary range that the Mayor determines to be appropriate.

- 1001.4 The Mayor, at his or her sole discretion, may change the salary of any person holding an appointment in the Executive Service at any time to any other salary within the salary range for the level occupied.
- 1001.5 The salary of an Executive Service employee who is temporarily assigned to a position at a higher or lower level in the DX Schedule shall be set, at the discretion of the Mayor, at any salary within the salary range of the level to which the employee is temporarily assigned or at a salary within the salary range of the level of the employee's regular Executive Service position.
- 1001.6 A person paid from the DX Schedule shall not be entitled to premium pay.
- 1001.7 The Director, DCHR, shall publish procedures to implement this section, including the level designated by the Mayor for each Executive Service position.

1002 SUBSEQUENT APPOINTMENTS

- 1002.1 Except as provided in section 1002.2 of this section, no person holding a position in the Executive Service may be appointed to a position in the Career, Educational, or Management Supervisory Service for at least one (1) year immediately following his or her separation from the Executive Service.
- 1002.2 Upon termination from the Executive Service, a person with Career, Educational, or Management Supervisory Service status may retreat, at the discretion of the Mayor and in such service in which he or she has status, within three (3) months, to a vacant position for which he or she is qualified.

1003 PRE-EMPLOYMENT TRAVEL AND RELOCATION EXPENSES AND TEMPORARY HOUSING ALLOWANCE

- 1003.1 An agency may pay to an individual reasonable travel expenses up to a maximum of five thousand dollars (\$5,000), incurred incidental to pre-employment interviews held for the purpose of ascertaining his or her qualifications for a position in the Executive Service.
- 1003.2 An agency may pay relocation expenses for the individual and his or her immediate family when the individual is selected for or appointed to a position in the Executive Service, if that relocation is to the District of Columbia from outside the Greater Washington Metropolitan Area.
- 1003.3 In the case of an individual eligible for relocation expenses pursuant to section 1003.2 of this section, an agency may pay a reasonable temporary housing allowance for a period not to exceed sixty (60) days for the individual and his or her immediate family.

- 1003.4 Payment of expenses under sections 1003.2 and 1003.3 of this section may only be made after the selectee or appointee signs a notarized agreement to remain in the District government service for twelve (12) months after his or her appointment, unless separated for reasons beyond his or her control that are acceptable to the Mayor.
- 1003.5 Any expense incurred for which reimbursement is sought pursuant to this section must be supported by a valid receipt or invoice, the original of which must be submitted with the request for reimbursement.
- 1003.6 If an individual violates an agreement under section 1003.4 of this section, the money paid by the District government for expenses shall be a debt due to the District government and shall be recoverable by set-off, in accordance with Chapter 29 of these regulations, against accrued pay or any other amount due the individual.

1004 PERFORMANCE CONTRACT

- 1004.1 The Mayor (or designee) shall set performance expectations and goals for each subordinate agency head in a written annual performance contract. The performance contract shall outline agency-specific and operational goals, with a corresponding timeline for accomplishment of each goal. Both the Mayor and the subordinate agency head shall sign the annual performance contract.
- 1004.2 Each subordinate agency head shall be evaluated on an annual basis on the achievement of the performance expectations and goals in the performance contract for that year.
- 1004.3 The performance rating period for each subordinate agency head shall be from the beginning of each fiscal year to the end of the fiscal year.

1005 PERFORMANCE INCENTIVES

- 1005.1 Pursuant to section 1057 of the CMPA (D.C. Official Code § 1-610.57), the Mayor may authorize performance incentives for exceptional service by a subordinate agency head.
- 1005.2 A performance incentive may be paid only once in a fiscal year, and only when the agency head is subject to an annual performance contract that clearly identifies measurable goals and outcomes and the agency head has exceeded contractual expectations in the year for which the incentive is to be paid.
- 1005.3 The amount of a performance incentive shall be determined by the Mayor and shall not exceed ten percent (10%) of the employee's rate of basic pay in any year.

- 1005.4 A performance incentive pursuant to this section shall be approved as specified in section 1005.6 of this section.
- 1005.5 A performance incentive granted under this section shall not be considered base pay for any purpose, and shall be subject to the withholdings of federal, District of Columbia, and State income taxes, and social security taxes, if applicable. The amount of a performance incentive shall not be adjusted upward to cover these taxes.
- 1005.6 Performance incentives pursuant to this section shall be approved in accordance with procedures established by the Director of the DCHR. The procedures shall provide for the following approval authorities, which may be further limited by written instruction from the Mayor when deemed to be in the best interests of the District government:
- (a) The Mayor may approve performance incentives exceeding two thousand dollars (\$2,000) for subordinate agency heads, excluding the Director of the DCHR, as specified in section 1005.6 (c) of this section.
 - (b) The Mayor may grant a performance incentive to the Director of the DCHR after review and recommendation by the City Administrator.
 - (c) To advise the Mayor in reviewing and recommending performance incentives for subordinate agency heads, excluding the Director of the DCHR, the Mayor shall appoint a committee comprised of Deputy Mayors, the Mayor's Chief of Staff, the City Administrator, and the Director of the DCHR (or designee). The committee shall meet at least once every year to discuss annual performance incentives for subordinate agency heads.

1006 ADDITIONAL INCOME ALLOWANCE FOR MEDICAL OFFICERS

- 1006.1 Pursuant to section 1056 of the CMPA (D.C. Official Code § 1-610.56), an additional income allowance of up to fifteen percent (15%) of the maximum rate of pay for the level held may be paid, at the discretion of the Mayor, to a subordinate agency head who is required to hold a medical degree to serve in his or her position and who enters into a service agreement.

1007 SEPARATION PAY

- 1007.1 Pursuant to section 1058 of the CMPA (D.C. Official Code § 1-610.58), and at the discretion of the Mayor and subject to the provisions of this section, a subordinate agency head may receive separation pay of up to twelve (12) weeks upon separation from District government service, provided that the agency head has been employed by the District government in the position from which separating for at least one (1) year prior to separation. Any

separation pay granted to a subordinate agency head who has been employed by the District government for less than one (1) year prior to separation shall not exceed four (4) weeks of his or her basic pay.

- 1007.2 The number of weeks of separation pay authorized pursuant to this section shall not exceed the number of weeks between the individual's separation and the individual's appointment to another position in the District government.
- 1007.3 Separation pay, if authorized pursuant to section 1007.1 of this section, shall be provided at the time of separation from the District government as a lump-sum, one-time (1-time) payment, subject only to the withholdings of federal, District of Columbia, and State income taxes, and social security taxes, if applicable.
- 1007.4 Separation pay shall not be payable to any individual who:
- (a) Accepts an appointment to another position in the District government without a break in service; or
 - (b) Is eligible to receive an annuity under any retirement program for employees of the District government, excluding the District retirement program under section 2605 of the CMPA (D.C. Official Code § 1-626.05).
- 1007.5 An individual who receives separation pay pursuant to this section, and who is subsequently appointed to any position in the District government during the period of weeks represented by that payment, shall be required to repay the amount of separation pay attributable to the period covered by such appointment. The pro-rated amount to be repaid shall be based on the entire amount of the separation pay, including all deductions for taxes, *etc.*, and shall be paid to the agency that made the separation payment.

1008 UNIVERSAL LEAVE

- 1008.1 An employee hired on or after January 2, 1999 without a break in service from a District government position subject to accrual of annual and sick leave who is appointed to serve in an Acting or Interim capacity in an Executive Service position shall not become subject to universal leave until after confirmation by the Council and promulgation of a Mayor's Order appointing him or her to the Executive Service position, whereupon applicability of the provisions of this section shall become effective as of the date specified by Mayor's Order as the effective date of the Executive Service appointment.
- 1008.2 Each Executive Service employee shall have a universal leave account.

- 1008.3 On the first (1st) pay period of the leave year, each individual shall have his or her universal leave account credited with twenty-six (26) days of universal leave.
- 1008.4 Except as provided in section 1008.5 of this section, each full biweekly pay period represents one (1) workday of accrued universal leave.
- 1008.5 Each Executive Service employee appointed after the first (1st) pay period of the leave year shall have his or her leave account credited with universal leave on a pro rata basis.
- 1008.6 An Executive Service employee who initially enters on duty on any workday of a biweekly pay period shall receive credit for the entire biweekly pay period for purpose of crediting universal leave.
- 1008.7 Universal leave provided by this chapter shall be used on days on which an Executive Service employee would otherwise work and receive pay and shall be exclusive of official holidays and non-workdays established by statute or administrative order.
- 1008.8 There shall be no charge to universal leave for absences of less than one (1) workday.
- 1008.9 An Executive Service employee may carry over not more than five (5) days of unused universal leave for use in succeeding years. All other unused leave shall be forfeited at the end of the leave year.
- 1008.10 Upon separation, an Executive Service employee shall be paid for any universal leave remaining to his or her credit (less a pro-rated amount representing the portion of the universal leave that would be creditable for the remainder of the year).
- 1008.11 Payment for leave upon separation from the Executive Service as provided in section 1008.10 of this section shall be at the employee's rate of pay at the time of separation.
- 1008.12 Except as provided in section 1008.14 of this section, each employee who was in the Executive Service on or before January 2, 1999 shall have his or her accrued annual leave balance, up to a maximum of two hundred forty (240) hours, transferred to an annual leave escrow account for use at the discretion of the employee until exhausted.
- 1008.13 The employee shall be given a lump-sum payment for any annual leave in excess of the leave transferred pursuant to section 1008.12 of this section, payable at the rate of pay in effect on the last day of the last pay period of the 1998 leave year.

- 1008.14 Each employee appointed without a break in service to a position in the Executive Service from another position in the District government on or after October 21, 1998 shall have his or her accrued annual leave balance, up to a maximum of two hundred forty (240) hours, transferred to an annual leave escrow account for use at the discretion of the employee until exhausted.
- 1008.15 The employee shall be given a lump-sum payment for any annual leave in excess of the leave transferred pursuant to section 1008.14 of this section, payable at the rate of pay in effect immediately before his or her appointment to the Executive Service.
- 1008.16 Upon separation, an Executive Service employee shall be paid for any annual leave remaining in the annual leave escrow account.
- 1008.17 Sick leave credit of an Executive Service employee that was accrued under section 1203 (j) of the CMPA (D.C. Official Code § 1-612.03 (j)) shall be held in a sick leave escrow account and may be used at the discretion of the employee until exhausted.
- 1008.18 Any balance remaining in a sick leave escrow account at the time of retirement of an Executive Service employee under the U.S. Civil Service Retirement System (Chapter 83 of Title 5 of the U.S. Code) or the Police and Fire Retirement System (D.C. Official Code § 5-701 *et seq.*) shall be available for use as additional service credit under the provisions of the applicable retirement system.
- 1008.19 When an employee elects to use leave from either the annual leave escrow account or the sick leave escrow account, such usage shall only be charged for absences for a full day, resulting in a reduction of eight (8) hours in the balance of the sick leave or annual leave escrow account.

1009 RETIREMENT BENEFITS – RESERVED

1010 LIFE INSURANCE BENEFITS – RESERVED

1011 DISABILITY INCOME PROTECTION PROGRAM – RESERVED

1099 DEFINITIONS

- 1099.1 When used in this chapter, the following terms shall have the meaning ascribed:

Executive Service – any subordinate agency head position under the administrative control of the Mayor, to which the Mayor is authorized to appoint executives in accordance with sections 1051 through 1063 of the CMPA (D.C. Official Code § 1-610.51 *et seq.*).

Greater Washington Metropolitan Area – the Consolidated Metropolitan Statistical Area which includes Washington, D.C. (the “Washington-Baltimore, DC-MD-VA-WV CMSA”), as defined by the Office of Management and Budget June 30, 1998 (revised November 3, 1998), and which consists of the following:

- (a) The Baltimore, MD Primary Metropolitan Statistical Area (PMSA), consisting of Anne Arundel County, Baltimore County, Carroll County, Harford County, Howard County, Queen Anne’s County, and Baltimore city;
- (b) The Hagerstown, MD PMSA, consisting of Washington County; and
- (c) The Washington, DC-MD-VA-WV PMSA, consisting of the District of Columbia; Calvert County, MD; Charles County, MD; Frederick County, MD; Montgomery County, MD; Prince George’s County, MD; Arlington County, VA; Clarke County, VA; Culpeper County, VA; Fairfax County, VA; Fauquier County, VA; King George County, VA; Loudoun County, VA; Prince William County, VA; Spotsylvania County, VA; Stafford County, VA; Warren County, VA; Alexandria City, VA; Fairfax City, VA; Falls Church City, VA; Fredericksburg City, VA; Manassas City, VA; Manassas Park City, VA; Berkeley County, WV; and Jefferson County, WV.

Performance contract – an agreement between an agency head and the Mayor or the City Administrator that may be entered into and that clearly identifies measurable goals and outcomes.

Pre-employment travel expenses – expenses allowed for an individual pursuant to section 1003.1 of this chapter, which may include such items as hotel accommodations, travel (commercial carrier, privately owned vehicle, *etc.*), and a per diem allowance.

Relocation expenses – expenses allowed for an individual and his or her immediate family pursuant to section 1003.2 of this chapter, which may include such items as transportation of family, transportation of household goods and expenses related thereto, temporary storage expenses, relocation services company, property management services, and a per diem allowance.

Subordinate agency – any agency under the direct administrative control of the Mayor, including, but not limited to, the agencies listed in section 301(q) of the CMPA (D.C. Official Code § 1-603.01(17)).

Temporary housing allowance – subsistence expenses incurred by an individual and his or her immediate family while occupying lodging obtained for the purpose of temporary occupancy when authorized pursuant to section 1003.3 of this chapter.

Comments on these proposed regulations should be submitted, in writing, to Ms. Brender L. Gregory, Director, D.C. Department of Human Resources, 441 4th Street, N.W. Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these proposed regulations are available from the above address.

D.C. DEPARTMENT OF HUMAN RESOURCES**NOTICE OF PROPOSED RULEMAKING**

The Director of the D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2008-92, dated June 26, 2008, and in accordance with the provisions of Chapter XXVII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-627.01 *et seq.*) (2006 Repl.), hereby gives notice of the intent to adopt, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, the following proposed rules. **The purpose of these rules is to amend Chapter 27, Temporary Assignment of Personnel, of Title 6 of the District of Columbia Municipal Regulations (DCMR)**, to update all citations to the D.C. Official Code and other legal and regulatory citations and references to agencies' names throughout the chapter; and make other minor non substantive changes throughout the chapter. Upon adoption, these rules will amend Chapter 27, Temporary Assignment of Personnel, of Title 6 DCMR, published at 36 DCR 8069 (November 24, 1989) and amended at 44 DCR 1670 (March 21, 1997), 49 DCR 1272 (February 15, 2002), and 49 DCR 4871 (May 24, 2002).

CHAPTER 27**TEMPORARY ASSIGNMENT OF PERSONNEL**

Chapter 27, Temporary Assignment of Personnel, of Title 6 of the District of Columbia Municipal Regulations, is amended to read as follows:

2700 STATUTORY AUTHORITY AND APPLICABILITY

- 2700.1 The statutory authority for temporary assignments of personnel is contained in Chapter XXVII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-627.01 *et seq.*).
- 2700.2 This chapter covers all District government employees except for the following:
- (a) The Mayor and members of the Council of the District of Columbia;
 - (b) Members of Boards and Commissions; and
 - (c) Educational Service employees of the University of the District of Columbia.

2701 AUTHORIZATION FOR TEMPORARY ASSIGNMENTS OF PERSONNEL

- 2701.1 District government agencies are authorized to enter into personnel exchange agreements with private sector organizations, institutions of higher education, or agencies of federal, state, and local governments.
- 2701.2 A personnel exchange agreement authorized under this chapter may be used only when supervision of the participating employee changes from that of his or her permanent employer to supervision by the agency or organization to which the assignment is made.
- 2701.3 Prior to commencing an assignment pursuant to this chapter, a written agreement shall be executed. The written agreement shall specify all of the following:
- (a) The duties and responsibilities to be carried out in the assignment;
 - (b) The terms and conditions for payment of salary and other expenses, or reimbursement among participating agencies or organizations;
 - (c) A statement that the assigned employee shall observe all rules governing the agency or organization to which the assignment is made under the agreement;
 - (d) The signature of the assigned employee indicating concurrence in and understanding of the assignment;
 - (e) The signatures of appropriate officials of the sending and receiving agencies or organizations; and
 - (f) The signature of the Director of the D.C. Department of Human Resources (DCHR) or independent personnel authority concurring in the assignment.
- 2701.4 An assignment under a personnel exchange agreement may be made for a period of up to two (2) years and, with the concurrence of the agencies or organizations and the employee involved, may be extended in increments of one (1) year. A written extension agreement shall be executed and signed by the employee, the appropriate officials of the sending and receiving agencies or organizations, and the Director of the DCHR or independent personnel authority concurring in the extension of the assignment.

2702 ASSIGNMENT OF EMPLOYEES FROM PRIVATE SECTOR ORGANIZATIONS TO DISTRICT GOVERNMENT

- 2702.1 It is the policy of the District government to utilize personnel exchange

agreements sparingly to assign private sector employees to District agencies to meet highly specialized needs for professional services on a temporary basis.

- 2702.2 Nothing in this chapter shall be interpreted to mean that in every personnel exchange agreement between a District government agency and a private sector organization the District government agency shall be the party paying any or all of the costs of the professional services to be provided by the private sector employee.
- 2702.3 A personnel exchange agreement to assign a private sector employee to a District government agency covered by this chapter shall contain the terms and conditions for the payment or the reimbursement of salary, fringe benefits and, if appropriate, general and administrative expenses.
- 2702.4 When a District government agency is reimbursing a private sector organization, the private sector organization shall not receive compensation in a manner to earn a profit from the assignment of the private sector employee to the District government agency.
- 2702.5 A private sector employee assigned to a District government agency shall not receive compensation and fringe benefits greater than those he or she would have received in the absence of the agreement assigning the individual to the District government agency.
- 2702.6 Any reimbursement by a District government agency entering into a personnel exchange agreement shall be limited to the cost of documented salary, applicable fringe benefits including payroll taxes, social security, unemployment insurance, worker's compensation insurance, health insurance, pensions, Federal Insurance Compensation Act payments, and, if appropriate, general and administrative expenses.
- 2702.7 Prior to entering into a personnel exchange agreement and commencing the assignment of a private sector employee to a District government agency pursuant to this chapter, the agency head shall prepare a written determination and findings explaining the reasons the required professional services cannot be secured through standard recruitment practices or procurement procedures.
- 2702.8 The written determination and findings pursuant to section 2702.8 of this section shall include but not be limited to the following:
- (a) A detailed justification explaining the need for the professional services;
 - (b) The qualification requirements for the professional services;
 - (c) A detailed statement and documentation demonstrating the specific

outreach and recruitment efforts undertaken by the agency to secure the professional services needed through standard recruitment practices;

- (d) A statement signed by the Chief Procurement Officer (or his or her designee) certifying that the agency has demonstrated that it cannot utilize procurement procedures to secure the professional services needed, and stating the basis for that conclusion; and
- (e) A statement signed by the agency head to attest that the agency has demonstrated that it cannot secure the required professional services through standard recruitment practices or procurement procedures, and stating the basis for that conclusion.

2702.9 The written determination and findings and supporting documentation, and the signed procurement certification described in section 2702.9 (d) of this section shall be presented to the Director of the D.C. Department of Human Resources (DCHR) or independent personnel authority, as applicable. The Director of the DCHR or independent personnel authority shall certify, in writing, that:

- (a) The agency has exhausted every effort to secure the professional services through standard recruitment practices; and
- (b) The Chief Procurement Officer (or his or her designee) has certified that the agency has exhausted every effort to secure the professional services through standard procurement procedures.

2702.10 Notwithstanding the provisions of section 2702.10 of this section, the Chief Technology Officer shall certify all determinations and findings in the case of the Office of the Chief Technology Officer.

2702.11 The Director of the DCHR and each independent personnel authority, as appropriate, shall develop and publish appropriate procedures for the preparation and submission of written determinations and findings.

2702.13 When the District government agency is reimbursing the private sector organization, the private sector organization shall prepare a written reimbursement agreement for the cost of the salary, fringe benefits, and any general and administrative expenses to be reimbursed. The reimbursement agreement prepared by the private sector organization shall include all of the following:

- (a) A detailed explanation of each category of costs and the actual amounts to be reimbursed by the District government agency;
- (b) A certification of the accuracy of each category of costs and the actual

amounts to be reimbursed by the District government agency; and

- (c) A certification that any general and administrative expenses presented for reimbursement are actual costs, the reasons for incurring such general and administrative expenses and their justification, that those costs are allowable and reasonable, and that they were calculated using the standards and principles specified in section 2702.14 of this section.

- 2702.14 Any general and administrative expenses to be reimbursed by a District government agency for off-site employees shall be:
- (a) Calculated using the standards in the Federal Acquisition Regulations (FAR) System, Title 48 of the Code of Federal Regulations, in particular, the standards and contract costs principles and procedures to calculate indirect costs in 48 CFR 31.203 (2000); and
 - (b) Based on and be consistent with the results of audited off-site overhead rates for a period of three (3) years prior to submission of the reimbursement agreement by the private sector organization.
- 2702.15 When general and administrative costs are to be reimbursed by the District government agency, the results of audited off-site overhead rates as described in section 2702.14 of this section shall be presented to the District government agency as supporting documentation to the reimbursement agreement.
- 2702.16 Prior to signing a personnel exchange agreement, the District government agency shall concur with all the terms and conditions of the assignment, particularly the terms of a reimbursement agreement prepared by the private sector organization under section 2702.13 of this section, when applicable, and sign the reimbursement agreement.
- 2702.17 The agency head shall submit the signed personnel exchange agreement and any supporting documentation, including the certified determination and findings in the case of the Office of the Chief Technology Officer, and the signed reimbursement agreement when applicable, to the Director of the DCHR or independent personnel authority. The Director of the DCHR or independent personnel authority shall review the personnel exchange agreement and any supporting documentation, and sign the personnel exchange agreement to concur in the assignment.
- 2702.18 The District government agency shall be encouraged and shall reserve the right to audit the reimbursable costs in a personnel exchange agreement under the circumstances and methods the District government agency deems appropriate and require the private sector organization to reimburse the District government agency for any unauthorized fees paid.

2702.19 A former District government employee working for a private sector organization shall be prohibited, for a period of two (2) years after his or her separation from District government employment, from participating in a personnel exchange agreement between the District government and the employing private sector organization.

2703 STATUS OF DISTRICT GOVERNMENT EMPLOYEES WHILE ON ASSIGNMENT

2703.1 A District government employee participating in a Personnel Exchange Program shall be considered either on detail to the receiving agency or organization, or on a leave of absence from the sending agency.

2703.2 While on assignment, a District government employee on detail shall be entitled to the same salary and benefits accruing to his or her position with the sending District government agency, and shall remain an employee of the sending agency for all other purposes except supervision of duties during the period of detail.

2703.3 The salary and benefits of a District government employee on detail shall be paid by the sending agency.

2703.4 While on assignment, a District government employee on leave of absence shall be entitled to at least the same salary and benefits to which he or she would otherwise be entitled.

2703.5 The salary and benefits of a District government employee on a leave of absence shall be paid by the receiving agency or organization unless the agreement contains different terms.

2703.6 Leave with or without compensation may be granted to a District government employee by the receiving agency or organization if the agreement permits the agency or organization to act as the leave-approving authority for the employee.

2703.7 A District government employee suffering disability or death in the course of the temporary assignment shall be treated as a District government employee under the District's disability compensation program, except in any case in which the employee was entitled to and elected to receive similar benefits under the receiving agency's or organization's program.

2704 STATUS OF NON-DISTRICT GOVERNMENT EMPLOYEES WHILE ON ASSIGNMENT

2704.1 Unless the personnel exchange agreement contains different terms, the salary and benefits of non-District government employees on assignment to the

District government shall be paid by the sending agency or organization.

- 2704.2 The receiving agency which appoints a non-District government employee under the Personnel Exchange Program may do so without regard to the regulations governing the selection of employees in the Career, Management Supervisory, and Educational Services and may or may not compensate such appointed employees from agency funds.
- 2704.3 A non-District government employee suffering disability or death while on assignment to the District government shall be treated as a District employee for the purpose of the District government's disability compensation program unless he or she elects similar benefits from his or her permanent employment.

2705 TRAVEL EXPENSES

- 2705.1 Travel expenses of District or non-District government employees assigned to another government, private sector organization, or institution of higher education may be paid by the District government, with the exception of travel expenses related to the work assignment at the receiving agency or organization.
- 2705.2 Travel expenses for transportation of immediate family, household goods, and personal effects to and from the location of the receiving agency or organization may routinely be paid by the District government under either of the following conditions:
- (a) For an assignment of more than nine (9) months; or
 - (b) When an assignment is terminated in less than nine (9) months for reasons beyond the control of the employee that are acceptable to the agency.
- 2705.3 A daily allowance may be paid to a District or a non-District government employee on assignments of less than nine (9) months.
- 2705.4 Travel expenses, relocation costs, and daily expenses may be shared by the participating governments, private sector organization, or institution of higher education or may be the sole responsibility of either party to the agreement.

2799 DEFINITIONS

When used in this chapter, the following terms shall have the meaning ascribed:

Audit – examination of statements of costs actually incurred. Such audits may consist of desk reviews, test checks of a limited number of transactions, or examinations in depth,

and shall be conducted in accordance with generally accepted accounting principles.

General and administrative (G&A) expense— management, financial, and other expenses, which are incurred by, or allocated to a business unit and which are for the general management and administration of the business unit as a whole. G&A expenses do not include those management expenses whose beneficial or causal relationship to cost objectives can be more directly measured by a base other than a cost input base representing the total activity of a business unit during a cost accounting period (48 CFR 9904.410.30 (2008)). General and administrative costs are indirect costs (48 CFR 31.203 (a), (b) (2008)).

Off-site employee – an employee who is detailed or assigned to the work site of another organization.

Procurement procedures – mechanism by which an agency enters into a negotiated personal services contract for expert and consulting services pursuant to the provisions of 27 DCMR 1900 *et seq.*

Comments on these proposed regulations should be submitted, in writing, to Ms. Brender L. Gregory, Director, D.C. Department of Human Resources, 441 4th Street, N.W., Suite 300 South, Washington, D.C. 20001, within thirty (30) days of the date of the publication of this notice. Additional copies of these proposed rules are available from the above address.

D.C. DEPARTMENT OF HUMAN RESOURCES**NOTICE OF PROPOSED RULEMAKING**

The Director, D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2008-92, dated June 26, 2008; and in accordance with the provisions of the Volunteer Services Act of 1977, effective June 28, 1977, (D.C. Law 2-12; D.C. Official Code § 1-319.01 *et seq.*) (2006 Repl.), hereby gives notice of the intent to adopt the following rules in not less than thirty (30) days from the publication of this notice in the *D.C. Register*. **The purpose of these rules is to re-designate current Chapter 40, *Utilization of Voluntary Services*, of Title 6 of the District of Columbia Municipal Regulations (DCMR), as Chapter 35, and name new Chapter 35 "*Voluntary Services*;"** and amend the rules for District government volunteers, to update D.C. Official Code citations and other legal and regulatory citations, agencies' names, etc., throughout the chapter; and make other amendments as necessary. Upon adoption, these rules will add a new Chapter 35, Voluntary Services, to Title 6 of the DCMR, published as "*Section 4000, Utilization of Voluntary Services*," at 29 DCR 5405 (December 10, 1982).

CHAPTER 35**VOLUNTARY SERVICES**

Current Chapter 40, Utilization of Voluntary Services, is removed from Title 6 of the District of Columbia Municipal Regulations; and a new Chapter 35, Voluntary Services, is added to Title 6 of the District of Columbia Municipal Regulations, to read as follows:

3500 UTILIZATION OF VOLUNTARY SERVICES

- 3500.1 The provisions of this chapter are set forth in accordance with the Volunteer Services Act of 1977 (Act), effective June 28, 1977 (D.C. Law 2-12; D.C. Official Code § 1-319.01 *et seq.*).
- 3500.2 District government agencies are authorized to accept and utilize the services of persons on a voluntary basis in accordance with the provisions of the Act and this chapter.
- 3500.3 Volunteers may be utilized to perform services for any purpose which is in the interests of the District government, except where specifically provided otherwise by this chapter, any other rules or regulations, or any law of the District of Columbia.
- 3500.4 No volunteer shall fill an authorized position or be utilized to perform any function or service which is currently being performed by a District government employee, provided that volunteers may be utilized to perform the following:

- (a) Any service or function which augments or supplements an existing function, service, or program which is staffed by District government employees;
- (b) Any service or function which creates a community service capability which would not be available under existing programs or within the level of available resources;
- (c) Duties assigned to a regular District government employee during the temporary absence of the employee, provided that the volunteer is qualified to perform the assigned duties; or
- (d) Duties assigned to a regular District government employee, on a temporary basis, during periods of an increased workload within an agency or to assist in relieving an existing backlog of work.

- 3500.5 Volunteers may be used only to enhance District government functions by contributing a service to an agency which would not otherwise be available. Therefore, normal recruitment, employment, and internal placement activities shall not be affected by the use of volunteers.
- 3500.6 In no case shall the use of voluntary services or the availability of voluntary services be used as the basis for a reduction in force in accordance with Chapter 24 of these regulations. The availability of voluntary services may, however, be considered as a factor in determining the allocation of limited resources.
- 3500.7 The standards of conduct contained in Chapter 18 of these regulations, prescribed for District government employees, shall be applicable to all volunteers.
- 3500.8 The services of a person on a voluntary basis shall not be accepted or utilized where such services or the use of such services would constitute a conflict of interest or could reasonably give rise to the appearance of a conflict of interest, as set forth in section 4 of the Act (D.C. Official Code § 1-319.03).
- 3500.9 Except as provided in subsection 3500.10 of this section, persons whose services are utilized on a voluntary basis shall not be eligible for any benefits normally afforded to District government employees, including health and life insurance benefits, retirement benefits, leave accrual, or the right to organize for collective bargaining purposes, unless such benefits are specifically provided by a law or laws of the District of Columbia.
- 3500.10 Persons whose services are utilized on a voluntary basis are eligible for compensation for a job-related illness or injury under Chapter XXIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-623.01 *et seq.*), except that, in cases of organizations which supply volunteers to perform services for the District

government also provide disability or disability compensation for such volunteers, in which the coverage provided by such organizations would be applicable.

- 3500.11 All volunteers shall be considered District government employees for the purposes of D.C. Official Code §§ 2-411 through 2-416.
- 3500.12 All rules and procedures with respect to the confidentiality of personnel records and release of personnel information which are in effect for District government employees shall be applicable to persons whose services are utilized on a voluntary basis in accordance with the Act and this chapter.
- 3500.13 The acceptance and utilization of the services of any person on a voluntary basis shall be at the discretion of each agency head, and the utilization of such services may be discontinued by the agency at any time for any reason.
- 3500.14 The decision by an agency official to discontinue the utilization of the voluntary services of any person shall not be considered an adverse action and is not appealable.
- 3500.15 Each volunteer shall be assigned to an employee of the agency utilizing the volunteer's services, who shall be responsible for the following:
- (a) Assignment of duties to the volunteer;
 - (b) Supervision and control of the activities of the volunteer;
 - (c) Informal evaluation (feedback) of performance; and
 - (d) Establishment and monitoring of the hours during which voluntary services are to be performed, as appropriate.
- 3500.16 Volunteers shall not engage in political activities during the time voluntary services are being performed.
- 3500.17 Persons who offer services on a voluntary basis shall only be utilized to perform services for which they are qualified based on training, education, experience, and maturity.
- 3500.18 Volunteers must be mentally and physically capable of performing the duties assigned without unreasonable danger of harm or injury to the volunteer or any other person.
- 3500.19 Although physical examinations shall not ordinarily be required, the agency head or designated supervisor may require a physical examination where voluntary services involve the handling of food or participating in activities which may be strenuous or potentially hazardous.

- 3500.20 Pursuant to Title II of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 4-1501.01 *et seq.*) and Chapter 4 of these regulations, an adult providing voluntary services in accordance with this chapter shall be subject to a criminal background check, traffic record check, or both, if he or she is providing unsupervised direct services to children or youth.
- 3500.21 Any volunteer whose services are utilized to perform duties which would ordinarily require that the person be licensed in a trade or craft under the laws of the District of Columbia shall be required to have or obtain the required license(s) prior to the performance of voluntary services.
- 3500.22 In accordance with the D.C. Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), no offer of voluntary services by any person shall be unlawfully rejected on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intra-family offense, and place of residence or business. Similarly, no offer of voluntary services by any person shall be unlawfully rejected under any other laws of the District of Columbia, as appropriate.
- 3500.23 The Director, D.C. Department of Human Resources (DCHR), shall establish guidelines for the acceptance and utilization of voluntary services in subordinate agencies, including guidelines for the deployment and supervision of volunteers pursuant to the provisions of this chapter. Subordinate agency heads may supplement such guidelines when appropriate.
- 3500.24 The residency requirements contained in Chapter 3 of these regulations shall not apply to volunteers under this chapter.
- 3500.25 No agency head, supervisor, or other District government employee shall be authorized to limit, waive, amend, or otherwise modify the restrictions and requirements on the use of voluntary services set forth in this chapter without the written approval of the Director of the DCHR, or the independent personnel authority, as applicable.
- 3500.26 Each volunteer shall be informed of the requirements and restrictions set forth in this chapter and any guidelines established by the subordinate agency head.
- 3500.27 Prior to engaging in the performance of voluntary services for the District government, each volunteer shall be required to sign a statement which acknowledges the following:
- (a) That the volunteer has been informed of the nature and scope of the voluntary services to be performed;

- (b) That the volunteer has been informed of and understands all of the provisions of the Act, this chapter, and any applicable agency guidelines for the use of volunteers; and
- (c) That the volunteer agrees to perform voluntary services under the terms and conditions set forth in the Act, this chapter, and any applicable agency guidelines for the use of volunteers.

3500.28 The Director of the DCHR, or an independent personnel authority, as applicable, shall issue such procedures as he or she deems appropriate to implement the provisions of this chapter.

3599 DEFINITIONS

3599.1 When used in this chapter, the following terms have the meaning ascribed:

Agency – any unit of the District government required by law, by the Mayor of the District of Columbia, or by the Council of the District to administer any law, rule, or any regulation adopted under authority of law. The term “agency” shall also include any unit of the District government created by the reorganization of one (1) or more of the units of an agency and any unit of the District government created or organized by the Council of the District of Columbia as an agency.

Employee – an individual who performs a function of the District government and who receives compensation for the performance of such services.

Independent agency – any board or commission of the District of Columbia government not subject to the administrative control of the Mayor, including, the Board of Trustees of the University of the District of Columbia, the Board of Library Trustees, the Armory Board, the Board of Elections and Ethics, the Public Service Commission, the Zoning Commission for the District of Columbia, the Public Employee Relations Board, the District of Columbia Retirement Board, and the Office of Employee Appeals, the Council of the District of Columbia, and the Washington Metropolitan Area Transit Commission.

Personnel authority – an individual or entity with the authority to administer all or part of a personnel management program within the District government.

Subordinate agency – means any agency under the direct administrative control of the Mayor (D.C. Official Code § 1-603.01 (17)).

Volunteer – a person who donates his or her services to a specific program or agency of the District government by his or her free choice and without payment for the services rendered. The reimbursement of the actual expenditures by a volunteer on behalf of the District government shall not make that person a District government employee for the purposes of this chapter.

Comments on these proposed regulations should be submitted, in writing, to Ms. Brender L. Gregory, Director, D.C. Department of Human Resources, 441 4th Street, N.W., Suite 330S, Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these proposed rules are available from the above address.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKINGELECTRIC TARIFF 09-1, IN THE MATTER OF THE APPLICATION OF THE POTOMAC ELECTRIC POWER COMPANY TO REINSTATE RIDER "SL-TN"-TELECOMMUNICATIONS NETWORK CHARGE

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Section 2-505 of the District of Columbia Official Code,¹ of its intent to act upon the Application of the Potomac Electric Power Company ("Pepco" or "Company")² in not less than 30 days from the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*.

2. On August 14, 2009, Pepco filed a tariff Application seeking to reinstate Rider "SL-TN"-Telecommunications Network Charge.³ The Company states that this filing is in response to a request by the Interim Chief Technology Officer, Government of the District of Columbia.⁴ According to Pepco, this Tariff would enable the District of Columbia Government to expand the development of city-wide wireless communication by enabling the connection of outdoor wireless access points to existing streetlights and by providing the billing of the additional energy usage of those devices.⁵

3. Accordingly, Pepco seeks authority to revise and put into service the following tariff pages contained in its August 14, 2009 tariff filing:

Electricity, P.S.C. of D.C. No. 1

47th Revised Page No. R-1

47th Revised Page No. R-2

40th Revised Page No. R-2.1

16th Revised Page No. 2.2

5th Revised Page No. R-10

5th Revised Page No. R-10.1

3rd Revised Page No. R-31

¹ D. C. Code § 2-505 (2006 Repl.).

² *Electric Tariff 09-1, In the Matter of Application of the Potomac Electric Power Company to Reinstate Rider "SL-TN"- Telecommunications Network Charge ("ET 09-1")*, filed August 14, 2009 ("Pepco's Tariff Application").

³ *ET 09-1*, Pepco's Tariff Application.

⁴ *Id.*

⁵ *Id.*

4. The Application is on file with the Commission and may be reviewed at the Office of the Commission Secretary, 1333 H Street, N.W., Second Floor, West Tower, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday, or may be viewed on the Commission's website at www.dcpsec.org. Copies of the tariff pages are also available upon request, at a per-page reproduction cost.

5. Comments on the proposed Tariff Application must be made in writing to Dorothy Wideman, Commission Secretary, at the above address. All comments must be received within thirty (30) days of the date of publication of this NOPR in the *D.C. Register*. Reply comments may be filed within forty-five (45) days of the publication of the NOPR. Once the comment period has expired, the Commission will take final action on Pepco's Tariff Application.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKINGFORMAL CASE NO. 988, IN THE MATTER OF THE DEVELOPMENT OF
UNIVERSAL SERVICE STANDARDS AND THE UNIVERSAL SERVICE
TRUST FUND FOR THE DISTRICT OF COLUMBIA

1. The Public Service Commission of the District of Columbia (“Commission”) pursuant to its authority under D.C. Official Code § 2-505,¹ hereby gives notice of its intent to act upon the Application of Verizon Washington, DC Inc. (“Verizon DC”)² in the above-captioned matter in not less than thirty (30) days after the date of publication of this Notice of Proposed Rulemaking in the *D.C. Register*.

2. On August 11, 2009, Verizon DC filed an application requesting authority to amend the following tariff pages:

**GENERAL REGULATIONS TARIFF P.S.C.-D.C.-NO. 201
Section 1A, 3rd Revised Page 3**

3. Verizon DC identifies the proposed tariff amendment as an update to its Universal Service Trust Fund surcharge, which is required by Chapter 28 of the Commission’s Rules of Practice and Procedure. The surcharge is being updated to true-up the 2008 payments with the amounts actually billed to customers, and to adjust the surcharge for the 2009 assessment. With the approval of this Application, the monthly per line surcharge will be \$0.39 per non-Centrex line and \$0.05 per Centrex line. Verizon DC represents that this Application increases the surcharge \$0.13 for non-Centrex lines and \$0.02 for Centrex lines.³ Verizon DC requests that this tariff become effective September 1, 2009.⁴

4. The complete text of this Application is on file with the Commission. The proposed tariff revision is on file with the Commission and may be reviewed at the Office of the Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, NW, West Tower, Suite 200, Washington, DC 20005 between the hours of 9:00 am and 5:30 pm Monday through Friday. Copies of Verizon DC’s Application may be obtained by visiting the Commission’s website at www.dcpssc.org or at cost, by contacting the Commission Secretary at the above address.

¹ D.C. Official Code, § 2-505 (2006 Repl.).

² *Formal Case No. 988, In the Matter of the Development of Universal Service Standards and the Universal Service Trust Fund for the District of Columbia*, District of Columbia Universal Service Trust Fund Surcharge Compliance Filing for August 2009 (“Verizon DC Application”), filed August 11, 2009.

³ Application at 1.

⁴ Application at 2.

5. All persons interested in commenting on Verizon DC's Application may submit written comments and reply comments not later than thirty (30) and forty-five (45) days, respectively, after publication of this notice in the *D.C. Register* with Dorothy Wideman, Commission Secretary, at the above address. After the comment period has expired, the Commission will take final action on Verizon DC's Application.