

**DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF PLANNING (HISTORIC PRESERVATION OFFICE)
DEPARTMENT OF HEALTH
DEPARTMENT OF MENTAL HEALTH
AND
DEPARTMENT OF INSURANCE, SECURITIES, AND BANKING**

NOTICE OF FINAL RULEMAKING

CIVIL INFRACTIONS: SCHEDULE OF FINES AMENDMENTS

The Directors of the Department of Consumer and Regulatory Affairs (DCRA), the Office of Planning's Historic Preservation Office (HPO), the Department of Health (DOH), the Department of Mental Health (DMH), and the Department of Insurance, Securities, and Banking, pursuant to the authority set forth in section 104 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 ("the Act"), effective October 5, 1985, (D.C. Law 6-42; D.C. Official Code § 2-1801.04); section 10 of the Historic Landmark and Historic District Protection Act of 1978 (D.C. Law 2-144, as amended, D.C. Official Code § 6-1110), section 4902 of the Department of Health Functions Clarification Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 7-731); section 114 of the Mental Health Service Delivery Reform Act of 2001, effective December 18, 2001 (D.C. Law 14-56, D.C. Official Code § 7-1131.14); section 4 of the Department of Insurance and Securities Establishment Act of 1996, effective May 21, 1997 (D.C. Law 11-268; D.C. Official Code § 31-103); Mayor's Order 2004-46, dated March 22, 2004; Mayor's Order 2002-103, dated June 18, 2002; and Mayor's Order 99-141, dated September 2, 1999, Mayor's Order 86-38, dated March 6, 1986, Mayor's Order 83-119, dated May 6, 1983, Mayor's Order 83-25, dated January 3, 1983, Mayor's Order 79-50, dated March 21, 1979, hereby gives notice that final rulemaking action was taken on May 18, 2005 to adopt the following rulemaking to amend Title 16 of the District of Columbia Municipal Regulations (DCMR).

The final rules amend the definitions of Class 1, Class 2 and Class 3 infractions, increase the fine amounts for all classes of infractions, and expand the definition of recidivism for housing providers. In addition, the final rulemaking divides the civil infractions schedule of fines by District of Columbia Government agencies including the Department of Consumer and Regulatory Affairs (DCRA), Fire and Emergency Medical Services (D.C. Fire and EMS), the Department of Mental Health (DMH), the Department of Health (DOH), the Department of Insurance, Securities, and Banking (DISB) and the Historic Preservation Office (HPO) of the Office of Planning.

The rules were published as proposed rulemaking on April 1, 2005, in 52 *D.C.R.* 3253. On February 16, 2005, the proposed rulemaking was submitted to the Council of the District of Columbia for a 60-day period of review. The period of review ended on May 1, 2005 and the Council did not disapprove or amend the proposed rulemaking. The proposed rules included a

redesignation of Title 16 to encompass chapters 1 – 31 and a new Title 16A to encompass chapters 32 and 33. There will not be a new Title 16A. Chapter 32 of Title 16 will continue to contain the Schedule of Fines for the Act, including definitions of the classes of infractions, the fine amounts for each class, and related provisions regarding recidivism. New Chapters 33 – 38 of Title 16 will contain the classification of infractions for the listed District Government agencies with a clarifying provision in each chapter indicating that the provisions of Chapter 32, will apply to each infraction listed in the new chapters. (The current 16 DCMR Chapter 33 containing fines for the Department of Mental Health have been moved to the new 16 DCMR Chapter 35). Comments have been received and considered. There have been no substantive changes made to the proposed rules, only the proposed rules renumbered as described above and the caption changed to clarify that the Historic Preservation Office is in the Office of Planning. These final rules will be effective upon publication of this notice in the *D.C. Register*.

Chapter 32 of Title 16 DCMR (Civil Infractions Schedule of Fines) is amended to read as follows:

CHAPTER 32 CIVIL INFRACTIONS: SCHEDULE OF FINES

Secs.

3200 Classes of Infractions

3201 Fine Amounts

3200 CLASSES OF INFRACTIONS

3200.1 The schedule of fines set forth in this chapter shall include the following classes:

- (a) Class 1 - Egregious infractions that result from flagrant, fraudulent, or willful conduct, or unlicensed activity, or that are imminently dangerous to the health, safety, or welfare of persons within the District of Columbia;
- (b) Class 2 - Other serious infractions that result from flagrant, fraudulent, or willful conduct, or unlicensed activity, or that are imminently dangerous to the health, safety, or welfare of persons within the District of Columbia;
- (c) Class 3 - Infractions that involve a failure to comply with a law or rule requiring periodic renewal of licenses or permits, or infractions that are serious and have an immediate, substantial impact on the health, safety, or welfare of persons within the District of Columbia;
- (d) Class 4 - Infractions that involve a failure to post required licenses or permits, or infractions that are minor, but have the potential to be hazardous to the health, safety, or welfare of persons within the District of Columbia; and

- (e) Class 5 - Infractions that collectively create a nuisance but individually do not pose a threat to the health, safety, or welfare of persons within the District of Columbia.

3200.2 The schedule of fines may also include infractions that have not been classified in accordance with § 3200.1.

3201 FINE AMOUNTS

3201.1 The fines for the infractions specified in § 3200.1 shall be as follows:

- (a) For Class 1 infractions, the fines are as follows:

- (1) For the first offense.....\$ 2,000;
- (2) For the second offense.....\$ 4,000;
- (3) For the third offense..... \$ 8,000;
- (4) For the fourth and subsequent offenses.....\$16,000;

- (b) For Class 2 infractions, the fines are as follows:

- (1) For the first offense.....\$ 1,000;
- (2) For the second offense.....\$ 2,000;
- (3) For the third offense.....\$ 4,000;
- (4) For the fourth and subsequent offenses.....\$ 8,000;

- (c) For Class 3 infractions, the fines are as follows:

- (1) For the first offense.....\$ 500;
- (2) For the second offense.....\$ 1,000;
- (3) For the third offense..... \$ 2,000;
- (4) For the fourth and subsequent offenses.....\$ 4,000;

- (d) For Class 4 infractions, the fines are as follows:

- (1) For the first offense.....\$ 100;
- (2) For the second offense.....\$ 200;
- (3) For the third offense..... \$ 400;
- (4) For the fourth and subsequent offenses.....\$ 800;

(e) For Class 5 infractions, the fines are as follows:

- (1) For the first offense.....\$ 50;
- (2) For the second offense.....\$ 100;
- (3) For the third offense..... \$ 200;
- (4) For the fourth and subsequent offenses.....\$ 400.

3201.2 An infraction shall be a repeat infraction and shall carry the enhanced penalties set forth in § 3201.1 if:

- (a) The infraction is a violation by the same person of the same provision of a law or rule committed within 3 years following the initial infraction; or
- (b) The infraction is a violation by the same person within the same three-year (3 year) period and involves the same property, building or dwelling unit as the initial infraction and where both infractions involve a violation of any housing code provision or housing regulation of the Housing Regulations Subtitle A of Title 14 DCMR.

3201.3 An infraction committed by an individual acting as agent, partner, director, officer, or employee of a person shall be considered to have been committed by that person.

3201.4 For purpose of this Title, the term “person” means corporations, firms, agencies, companies, associations, organizations, partnerships, societies, and joint stock companies, as well as individuals.

3201.5 When a Notice of Infraction is issued, an the infraction is for the violation of a law contained in an unenacted title of the D.C. Official Code, or any superseding official code, the Notice of Infraction may cite the D.C. Official Code, or any superseding official code, provision instead of the organic law citation cited in this Title.

3201.6 The parenthetical language which follows the laws or regulations listed in this Title is only descriptive and the provisions of the cited law or regulation are controlling if there is any conflict between the cited law or regulation and the descriptive parenthetical language.

Title 16 DCMR is amended to add a new Chapter 34 to read as follows:

**CHAPTER 34 FIRE AND EMERGENCY MEDICAL SERVICES
(EMS) DEPARTMENT INFRACTIONS**

Secs.

3400 Administrative Procedures and Schedule of Fines Applicable

3401 Fire Prevention Code Infractions

3402 Security And Fire Alarms Systems Infractions

**3400 ADMINISTRATIVE PROCEDURES AND SCHEDULE OF FINES
APPLICABLE**

3400.1 The civil infractions set forth in this chapter are subject to the provisions of Chapter 31 (Administrative Procedures) and Chapter 32 (Schedule of Fines) of this Title.

3401 FIRE PREVENTION CODE INFRACTIONS

The following abbreviations apply to this section:
IFC- International Fire Code

3401.1 Violations of any of the following provisions of the Fire Prevention Code shall be a Class 1 Infraction:

- (a) 12H DCMR § F-102.3 (change in occupancy that will subject the structure to special provisions of the Fire Prevention Code or Building Code without approval of the code official);
- (b) 12H DCMR § F-107.1 (failure to obtain and maintain required permits on the premises, including operational or installation permits as described by 12H DCMR §§ F-107.9 and 107.10);
- (c) 12H DCMR § F-109.7 (obstructing operations of the Fire Department in connection with extinguishment or control of any fire, or action relating to other emergencies);
- (d) 12H DCMR § F-110.1 (failure to remedy dangerous conditions or remove hazardous materials);
- (e) 12H DCMR § F-110.1(1) (failure to remedy hazardous conditions liable to cause or contribute to the spread of fire in, or on, the premises, building or structure, or endangering life or property);

- (f) 12H DCMR § F-110.1(8) (failure to remedy hazardous conditions arising from defective or improperly installed equipment for handling or using combustible, explosive or otherwise hazardous materials);
- (g) 12H DCMR § F-110.2 (failure to maintain, on a structure, premises, or lot, the fire protection equipment, systems or devices, means of egress or safeguards required by Fire Prevention Code);
- (h) 12H DCMR § F-110.3 (failure to remedy unsafe conditions in a existing structure or vacant structure, or a deficiency in a means of egress);
- (i) 12H DCMR § F-111.2 (refusal to leave, or interference with the evacuation of other occupants or continuance of any operation after receiving an evacuation order);
- (j) 12H DCMR § F-112.2 (failure to comply with a notice of violation issued by the code official);
- (k) IFC § 311.2.1 (failure to secure exterior and interior openings of vacant premises);
- (l) 12H DCMR § F-603.4 (failure to prohibit the use of portable unvented heaters or fuel fired heating equipment in use Group A, E, I, R-1, R-2, R-3 and R-4);
- (m) 12H DCMR § F-604.1 (failure to maintain and inspect emergency and standby systems in accordance with ICC Electric Code, NFPA 110 and NFPA 111);
- (n) 12H DCMR F-904.1 (failure to inspect, test and maintain automatic fire-extinguishing systems (except sprinkler systems) in accordance with the International Fire Code and the applicable referenced standards);
- (o) 12H DCMR § F-1011.5 (failure to post occupant load);
- (p) 12H DCMR § F-1011.6 (permitting overcrowding or admitting persons beyond the established occupant load); or
- (q) 12H DCMR § F-3309.1.1 (engaging in the manufacturing, possession, storage, display, sale, setting off, or discharge of prohibited fireworks).

3401.2

Violations of any of the following provisions of the Fire Prevention Code shall be a Class 2 infraction:

- (a) 12H DCMR § F-307.5 (operating charcoal burners and other open-flame cooking devices on a balcony or within 10 feet of combustible construction);
- (b) 12H DCMR § F-308.3 (failure to obtain a permit for open flame use in an educational or assembly occupancy);
- (c) 12H DCMR § F-314.5.1 (failure to provide a fire prevention attendant in a temporary exhibit of an unsprinklered building);
- (d) IFC § 404.2 (failure to prepare and maintain a fire safety and evacuation plan in accordance with this section);
- (e) IFC § 405.5 (failure to maintain emergency evacuation drill records);
- (f) IFC § 406.3 (failure to ensure employees are provided with fire prevention, evacuation and fire safety training);
- (g) IFC § 505.1 (failure to provide approved, legible and visible building address or identification);
- (h) IFC § 508.5.4 (obstructing fire hydrants, department connections or other fire protection system control valves);
- (i) 12H DCMR § F-907.3.1.5.2 (failure to install approved single-station smoke alarms in existing dwelling units, congregate residences, and hotel and lodging house guestrooms); or
- (j) 12H DCMR § F-1012.1 (failure to maintain emergency escape windows operational).

3401.3 Violation of any of the following provisions of the Fire Prevention Code shall be a Class 3 infraction:

- (a) IFC § 605.3 (failure to provide and maintain required clearance in front of electrical service equipment);
- (b) IFC § 803.1.3 (obstruction of egress or exit access visibility by placement furnishings or other objects);
- (c) IFC § 906.1 (failure to provide portable fire extinguishers in required occupancies and locations); or
- (d) 12H DCMR § F-1012.2 (failure to ensure security bars, grilles and screens over emergency escape windows are releasable or removable from the inside without use of a key or tool).

3401.4 Violation of any the following provisions of the Fire Prevention Code shall be a Class 4 infraction:

- (a) IFC 304.1 (failure to prohibit the accumulation of prohibited waste);
- (b) IFC 310.4 (removing, obscuring, defacing, mutilating or destroying “No Smoking” signs);
- (c) IFC 803.3.2 (failure to limit artwork and teaching material to not more than 20 percent on walls of corridors in educational occupancies);
- (e) IFC 804.1.1 (failure to prohibit display of natural cut trees in certain occupancies); or
- (f) 12H DCMR F-1013.1 (failure to provide stair identification of interior and exterior doors connecting more than three stories).

3401.5 Violation of any provision of the Fire Prevention Code not otherwise listed in this section shall be a Class 5 infraction.

3402 SECURITY AND FIRE ALARM SYSTEMS INFRACTIONS

3402.1 Reserved

3402.2 Reserved

3402.3 Violation of any of the following provisions shall be a Class 3 infraction:

- (a) Section 5(a) of the Security and Fire Alarm Systems Regulation Act of 1980, effective Sept. 26, 1980 (D.C. Law 3-107; **D.C. Official Code § 7-2804(a)**)(engaging in the business of an alarm dealer within the District of Columbia without an alarm dealer's license);
- (b) Section 6(a) of the Security and Fire Alarm Systems Regulation Act of 1980 (**D.C. Official Code § 7-2805(a)**) (acting as an alarm system agent within the District of Columbia without an alarm agent's license); or
- (c) Section 9(a) of the Security and Fire Alarm Systems Regulation Act of 1980 (**D.C. Official Code § 7-2808(c)**) (installing or maintaining an alarm system which does not have some safeguard which allows reasonable delay to halt or recall an accidental alarm activation before the alarm is communicated to the Metropolitan Police Department or the Fire and Emergency Medical Services Department).

3402.4

Violation of any of the following provisions shall be a class 4 infraction:

- (a) Section 4 of the Security and Fire Alarm Systems Regulation Act of 1980 (**D.C. Official Code § 7-2803**) (using any unapproved signaling device to transmit, or cause to be transmitted, a prerecorded message to report any fire, burglary, holdup or other emergency directly to the Metropolitan Police Department or the District of Columbia Fire and Emergency Medical Services Department);
- (b) Section 6(e) of the Security and Fire Alarm Systems Regulation Act of 1980 (**D.C. Official Code § 7-2805(e)**) (failing to display upon request a valid license identification card while installing, inspecting, maintaining, servicing or repairing an alarm system);
- (c) Section 7(a) of the Security and Fire Alarm Systems Regulation Act of 1980 (**D.C. Official Code § 7-2806(a)**) (failure of an alarm dealer to maintain and secure records);
- (d) Section 7(b) of the Security and Fire Alarm Systems Regulation Act of 1980 (**D.C. Official Code § 7-2806(b)**) (failure to maintain alarm agent user records as required by law);
- (e) Section 7(c) of the Security and Fire Alarm Systems Regulation Act of 1980 (**D.C. Official Code § 7-2806(c)**) (failure to post sign indicating alarm dealer);
- (g) Section 7(d) of the Security and Fire Alarm Systems Regulation Act of 1980 (**D.C. Official Code § 7-2806(d)**) (failure to adequately train or instruct employees);
- (h) Section 8(d) of the Security and Fire Alarm Systems Regulation Act of 1980 (**D.C. Official Code § 7-2807(d)**) (failure of user to maintain posted name of alarm agent or dealer);
- (i) Section 8(a) of the Security and Fire Alarm Systems Regulation Act of 1980 (**D.C. Official Code § 7-2807(a)**) (causing or permitting a false alarm);
- (j) Section 8(c) of the Security and Fire Alarm Systems Regulation Act of 1980 (**D.C. Official Code § 7-2807(c)**) (failure to maintain an alarm system in good working order or failing to promptly repair defects);
- (k) Section 8(d) of the Security and Fire Alarm Systems Regulation Act of 1980 (**D.C. Official Code § 7-2807(d)**) (failure of user to have person properly respond to scene when requested); or

- (l) Section 9 of the Security and Fire Alarm Systems Regulation Act of 1980 (D.C. Official Code § 7-2808(a)) (installing or maintaining a system by any person which creates an improper sound).