



MURIEL BOWSER
MAYOR

NOV 22 2019

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Suite 504
Washington, D.C. 20004

2019 NOV 22 PM 1:36
OFFICE OF THE
SECRETARY

Dear Chairman Mendelson:

I am transmitting for the consideration of the Council of the District of Columbia a proposed resolution entitled the "District of Columbia Aquatic Facilities Infractions Approval Resolution of 2019."

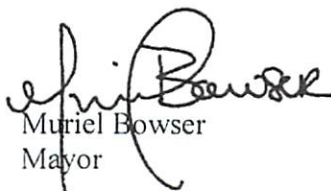
This resolution and the enclosed rules are submitted in accordance with sections 104 and 105 of the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985", effective October 5, 1985, (D.C. Law 6-42; D.C. Official Code §§ 2-1801.04 and 2-1801.05) (2012 Repl.).

The proposed rules will amend Title 16 of the *District of Columbia Municipal Regulations* (Consumers, Commercial Practices, and Civil Infractions) by establishing new Aquatic Facilities Infractions in Section 3621 of the DCMR to encourage compliance with the Department of Health's Aquatic Facilities Regulations: Swimming Pools, Spa Pools, and Saunas in Title 25-C (Food Operations and Community Hygiene Facilities) of the DCMR for the public's health and safety.

As a result, the Department of Health recommends transmitting the proposed rules to the Council as soon as possible so that it will be added to the Council's Agenda and published in the *D.C. Register* immediately following issuance of Council's approval resolution.

I urge the Council to take prompt and favorable action on these rules.

Sincerely,


Muriel Bowser
Mayor



Chairman Phil Mendelson
at the request of the Mayor

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Phil Mendelson, Chairman, at the request of the Mayor, introduced the following resolution,
which was referred to the Committee on _____.

To amend Title 16 of the District of Columbia Municipal Regulations by establishing new Aquatic Facilities Infractions in Section 3621 to correspond with the Department of Health's Aquatic Facilities Regulations: Swimming Pools, Spa Pools, and Saunas.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Aquatic Facilities Infractions Approval Resolution of 2019".

Sec. 2. Pursuant to sections 104 and 105 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 and 2-1801.05) (2012 Repl.), the Mayor, transmitted to the Council proposed rules to amend Title 16 (Consumers, Commercial Practices, and Civil Infractions) of the District of Columbia Municipal Regulations (DCMR) by establishing new Aquatic Facilities Infractions in Section 3621 of the DCMR to correspond with the Department of Health's Aquatic Facilities Regulations: Swimming Pools, Spa Pools, and Saunas in Title 25-C (Food Operations and Community Hygiene Facilities) of the DCMR, which were published in

the *D.C. Register* on June 9, 2017 at 64-No. 23 DCR 005359. The proposed rules will provide the Department of Health with enforcement tools designed to encourage compliance with the Department of Health's Aquatic Facilities Regulations: Swimming Pools, Spa Pools, and Saunas for the public's health and safety.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement provided by the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. The Secretary to the Council shall transmit a copy of this resolution, upon its adoption, to the Director of the Department of Health.

Sec. 5. This resolution shall take effect immediately.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to authority set forth in Sections 104 and 105 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(a)(1) and 2-1801.05) (2016 Repl.), Section 4902 (a) and (b) of the Department of Health Functions Clarification Act of 2001 (Act), effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 7-731(a)(11) and (b)) (2018 Repl.), and Mayor’s Order 2004-46(2) and (3)(v), dated March 22, 2004, hereby gives notice of the adoption of new aquatic facility infractions in Chapter 36, Title 16 (Consumers, Commercial Practices, and Civil Infractions) of the District of Columbia Municipal Regulations (DCMR).

These rules establish a new Section 3621 schedule of fines for swimming pool, spa, and sauna operations to correspond with the Department of Health’s Aquatic Facilities Regulations: Swimming Pools, Spa Pools, and Saunas in Subtitle C of Title 25 of the DCMR published in the *D.C. Register* on June 9, 2017, at 64-No. 23 DCR 005359.

On June 21, 2019, the First Notice of Proposed Rulemaking was published in the *D.C. Register* at 66-25 DCR 007431. The Department of Health received one public comment that recommended adding Imminent Health Violations to the Class 1 Schedule of Fines. Substantive changes were made to this rulemaking. On September 13, 2019, the Second Notice of Proposed Rulemaking was published in the *D.C. Register* at 66-38 DCR 012182. The Department of Health did not receive any comments and no changes were made to this Notice of Final Rulemaking. These rules were adopted as final on November 18, 2019, and will take effect immediately upon publication of this Notice in the *D.C. Register*.

Additions to Class 1 Infractions:

Commenter: Innovative Water Care, LLC

Comment: This letter is in regards to Notice ID N0083324, the proposed rulemaking for Aquatic Facilities Regulations. These proposed rules establish a new Section 3621 Schedule of Fines for swimming pool and spa operations, to correspond with the Notice of Final Rulemaking for Aquatic Facilities Regulations: Swimming Pools, Spa Pools, and Saunas in Subtitle C of Title 25 DCMR, which was published in the *D.C. Register* on June 9, 2017, at 64 DCR 005359. We are glad to hear that you are considering a list of infractions that are imminent health hazards requiring immediate closure of swimming pools. To protect public health, it is important to prioritize the code violations that could result in serious illness or injury to swimmers. Following are some suggested changes to the current draft along with the justification for the changes.

The following sections in 3621.2 Class 2 infractions should be moved to section 3621.1 Class 1 infractions.

- (d) Operating an aquatic facility with water quality pH level below 6.5 in violation of 25-C DCMR § 404.2(a)(1);
- (e) Operating an aquatic facility with water quality pH level above 8.0 in violation of 25-C DCMR § 404.2(a)(2);
- (f) The disinfectant level is below the minimum or above the maximum in violation of 25-C DCMR § 404.2(b)[.]

These changes are consistent with the text in the Centers for Disease Control and Prevention (CDC) Model Aquatic Health Code (MAHC 2018). Section 6.6.3 of the MAHC provides a list of imminent health hazards requiring immediate correction or closure, including pH less than 6.5, pH greater than 8.0 and “failure to provide the minimum disinfectant residual levels.”

In addition to moving these sections, the following text should be added to 3621.1:

The cyanuric acid level is above the maximum in violation of 25-C DCMR § 404.2(e);

The active form of chlorine in pools is hypochlorous acid. Cyanuric acid binds chlorine and lowers the hypochlorous acid concentration, thereby lowering the concentration of active disinfectant. An excessive concentration of cyanuric acid represents a situation where insufficient disinfectant is present and so is an imminent health hazard. Recent work has shown the increased risk of illness with cyanuric acid (Falk 2019). In addition, the U.S. Environmental Protection Agency (EPA) has recently notified drinking water primacy agencies of the effects of cyanuric acid and the importance of maintaining a sufficient hypochlorous acid residual (EPA 2018 and Wahman 2018).

Department of Health’s Response:

Section 3621.1 is amended as follows:

- (b) Operating an aquatic facility with water quality pH level below 6.5 in violation of 25-C DCMR § 404.2(a)(1);
- (c) Operating an aquatic facility with water quality pH level above 8.0 in violation of 25-C DCMR § 404.2(a)(2);
- (d) The disinfectant level is below the minimum or above the maximum in violation of 25-C DCMR § 404.2(b); and
- (e) Operating an aquatic facility with cyanuric acid level in excess of 100 ppm in violation of 25-C DCMR § 404.2(e)[.]

Chapter 36 Department of Health Infractions in Title 16 (Consumers, Commercial Practices, and Infractions) of the DCMR is amended as follows:

3621 AQUATIC FACILITIES INFRACTIONS

3621.1 Violations of the following provisions that are imminent health and safety hazards that are either confirmed or negligent or inherently dangerous shall be a Class 1 infraction:

- (a) Operating an aquatic facility with an unapproved or contaminated water supply source for potable water use in violation of 25-C DCMR §§ 400 and 401;
- (b) Operating an aquatic facility with water quality pH level below 6.5 in violation of 25-C DCMR § 404.2(a)(1);
- (c) Operating an aquatic facility with water quality pH level above 8.0 in violation of 25-C DCMR § 404.2(a)(2);
- (d) The disinfectant level is below the minimum or above the maximum in violation of 25-C DCMR § 404.2(b);
- (e) Operating an aquatic facility with cyanuric acid level in excess of 100 ppm in violation of 25-C DCMR § 404.2(e);
- (f) Operating an aquatic facility with contaminated water not treated or improperly treated with disinfectants in violation of 25-C DCMR §§ 406 and 411;
- (g) Operating an aquatic facility that is not retrofitted with a properly sized and piped collector tank to eliminate direct suction through the main drain in violation of 25-C DCMR § 408.5;
- (h) Operating an aquatic facility with direct suction without installing a main drain cover that meets the ANSI/ASME A112.19.8-2007 standard for drain covers in violation of 25-C DCMR § 408.6;
- (i) Operating an aquatic facility with a single main drain (other than an unblockable drain) without being equipped with a device or system such as a safety vacuum release system to prevent entrapment in violation of 25-C DCMR § 408.7;
- (j) Operating an aquatic facility with improper plumbing cross-connections between the drinking water supply and aquatic facility water or between sewage system and the aquatic facility including filter backwash facilities in violation of 25-C DCMR §§ 601.1;

- (k) Operating an aquatic facility in violation of a Notice of Closure/Summary Suspension, Revocation, Suspension, Warnings, or other directives issued by the Department as specified in 25-C DCMR §§ 408.10, 607.4, 716, 801, 807, 811, and 812;
- (l) Using, selling, moving, or destroying equipment, chemicals, or other operational supplies subject to a Condemnation Order by the Department in violation of 25-C DCMR § 804.1;
- (m) Failing to report a death, serious injury, or injury that requires resuscitation or admission to a hospital occurring at a swimming pool, spa pool, or sauna to the Department within twenty-four (24) hours of the incident in violation of 25-C DCMR § 413.1;
- (n) Using compressed chlorine gas or chlorine gas in violation of 25-C DCMR §§ 608.3 and 608.4;
- (o) Failing to allow the Department access to a swimming pool, spa pool, or sauna in violation of 25-C DCMR § 710;
- (p) Removing required signs or Department posted warnings or closures in violation of 25-C DCMR §§ 715.3, 720.3, 805.1, and 901.1(b);
- (q) Operating an aquatic facility with conditions dangerous to the health, safety, or welfare of bathers or patrons at the swimming pool, spa pool, or sauna, including but not limited to:
 - (1) Accidents involving bodily fluids in violation of 25-C DCMR § 412.7;
 - (2) Violations of recent editions of the District of Columbia's Construction Codes Supplements, as specified in Subsection 102.1(1) and Chapter 6;
 - (3) A drowning hazard;
 - (4) Broken glass, sharp edged or broken tile, metal, or other abrasion hazards in the water or deck area;
 - (5) Operating an aquatic facility during a fire;
 - (6) Operating an aquatic facility when there is a flood;
 - (7) Operating an aquatic facility with an interruption of municipal water service;

- (8) Operating an aquatic facility when there is a sewage backup;
- (9) Operating an aquatic facility with an onset of a confirmed waterborne illness;
- (10) An unapproved modification to a swimming pool, spa pool, or sauna determined by the Department to be unsanitary or dangerous to the public health, safety, or welfare;
- (11) Operating an aquatic facility with unprotected, overhead electrical wires within twenty (20) feet horizontally of the water of a swimming pool, spa pool, or sauna;
- (12) Operating an aquatic facility without a ground-fault circuit interrupter (GFCI) within twenty (20) feet of the inside wall of the aquatic facility designed to shut off electric power to protect people against electric shock from an electrical system or outlet; or
- (13) Operating an aquatic facility when a recirculation system or automatic disinfectant chemical feeding equipment is missing, malfunctioning, or not functioning.

3621.2 Violations of any of the following provisions shall be a Class 2 infraction:

- (a) Operating an aquatic facility with improper water temperatures in violation of 25-C DCMR § 202.1(b);
- (b) Operating an aquatic facility with a total absence of or improper depth markings in violation of 25-C DCMR §§ 402.3, and 402.4;
- (c) Operating an aquatic facility without proper water clarity from the pool deck in violation of 25-C DCMR §§ 402.1, 402.2, and 410.1;
- (d) Failing to continuously operate the aquatic facility's filtration equipment in violation of 25-C DCMR § 408.1, 408.3, 408.12, 409, and 410.3;
- (e) Operating an aquatic facility in violation of 25-C DCMR § 408.11;
- (f) Operating an aquatic facility with broken, unsecured, improperly secured, damaged or missing main drain grate or any submerged suction outlet grate in violation of 25-C DCMR §§ 408.16 and 408.18;
- (g) Operating an aquatic facility without required first aid and safety equipment on deck as specified in 25-C DCMR § 505;

- (h) Failing to properly handle, use, label, store, or ventilate chemicals in an aquatic facility in violation of 25-C DCMR §§ 607 or 608;
- (i) Using unapproved chemicals or applying chemicals by unapproved methods to an aquatic facility's water in violation of 25-C DCMR § 607.3;
- (j) Failing to prevent unauthorized access to an aquatic facility's machinery, electric panels, or chemicals used for the swimming pool, spa pool, or sauna in violation of 25-C DCMR § 607.7;
- (k) Operating an aquatic facility without the required personal protective equipment (PPE) to handle chemicals in violation of 25-C DCMR § 608.10(h);
- (l) Operating an aquatic facility with safety covers that do not meet strict performance standards as set by the American Society for Testing and Materials in ASTM Standard F1346-91, Standard Performance Specification for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas and Hot Tubs in violation of 25-C DCMR § 610.10;
- (m) Operating an aquatic facility with safety covers that are improperly installed, or secured with continuous union to the deck in violation of 25-C DCMR § 505.5;
- (n) Failing to report a complaint of illness attributed by a bather to use of a swimming pool, spa pool, or sauna to the Department within twenty-four (24) hours of the incident in violation of 25-C DCMR § 413.2;
- (o) Owning, operating, or managing a swimming pool, spa pool, or sauna without a valid license issued by the Department in violation of 25-C DCMR § 700.1;
- (p) Failing to maintain plumbing systems, including but not limited to toilet facilities (restrooms), shower facilities and handwashing sinks in good repair in violation of 25-C DCMR § 606.1;
- (q) Owning, operating, or managing a swimming pool, spa pool, or sauna without required barriers and/or fencing; or, with barriers and/or fencing not approved by the Department in violation of 25-C DCMR § 610;
- (r) Owning, operating, or managing a swimming pool without a pool safety cover in violation of 25-C DCMR § 610.10;

- (s) Owning, operating, or managing a swimming pool, spa pool, or sauna with an expired or suspended license in violation of 25-C DCMR § 700.2;
- (t) Operating, or managing a public swimming pool, spa pool, or sauna without a valid Certificate of Occupancy in violation of 25-C DCMR § 700.3;
- (u) Failing to post licenses, Certificate of Occupancy, certifications, and current inspection reports in violation of 25-C DCMR § 708.2;
- (v) Failing to post required signs in violation of 25-C DCMR §§ 201 and 202; or
- (w) Failing to keep swimming pool, spa pool or sauna, or pool deck free of sediment, floating debris, visible dirt and algae in violation of 25-C DCMR § 503.6.

3621.3 Violations of any of the following provisions shall be a Class 3 infraction:

- (a) Operating an aquatic facility in violation of 25-C DCMR §§ 500, 501, 502, 503, and 504;
- (b) Operating an aquatic facility without an emergency lighting source, or failing to maintain an emergency lighting source in violation of 25-C DCMR § 504.5;
- (c) Operating an aquatic facility without hot water in violation of 25-C DCMR §§ 602.2 and 602.7;
- (d) Operating an aquatic facility with a bather load in violation of 25-C DCMR §§ 201.1(b), 202.1(d), and 304.1;
- (e) Serving as a lifeguard or swimming instructor without a current lifeguard or instructor certification issued by the American Red Cross, the YMCA, or other nationally recognized aquatic training organizations adopted and recognized by the Department in violation of 25-C DCMR §§ 302.3 and 302.4;
- (f) Serving as a lifeguard or swimming instructor without a current certification in First Aid, and in adult, child and infant Cardio-Pulmonary Resuscitation and Automated External Defibrillator (CPR/AED) issued by the American Red Cross, the American Heart Association, the National Safety Council, the American Academy of Orthopedic Surgeons, or other nationally recognized aquatic training organizations adopted and recognized by the Department in violation of 25-C DCMR §§ 302.3 and 302.4;

- (g) Operating a swimming pool, spa pool, or sauna without the required number of lifeguards in violation of 25-C DCMR §§ 304;
- (h) Operating an aquatic facility without an approved Child Safety Plan, if applicable, or failing to provide copies of the facility's Child Safety Plan to the Department for review and approval in violation of 25-C DCMR §§ 305;
- (i) Operating an aquatic facility without a Water Quality Test Kit in violation of 25-C DCMR §§ 405;
- (j) Operating an aquatic facility without maintaining daily water quality and safety logs in violation of 25-C DCMR §§ 412;
- (k) Serving as a pool and spa operator without a current Pool and Spa Operator's Registration Card issued by the Department in violation of 25-C DCMR §§ 700.4; or
- (l) Constructing, installing, renovating or retrofitting, or operating any public swimming pool, spa pool, or sauna without first having received written approval from the Department of Health and the District Government in violation of 25-C DCMR §§ 705 and 706.

3621.4 Violations of any provision of the District's Swimming Pool and Spa Regulations (Subtitle C, Title 25 of the DCMR), which is not cited elsewhere in this section shall be a Class 4 infraction.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



ATTORNEY GENERAL
KARL A. RACINE

*PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION*

Legal Counsel Division

TO: Phillip Husband
General Counsel
Department of Health

FROM: Arthur J. Parker
Acting Deputy Attorney General
Legal Counsel Division

DATE: April 8, 2019

SUBJECT: The District of Columbia Aquatic Facilities Infraction Approval Resolution
of 2019
(AR-19-256)

This is to certify that this office has reviewed the above-referenced resolution and found it legally sufficient. If you have any questions, please do not hesitate to call me at 724-5565.

Arthur J. Parker