

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director of the Department of Consumer and Regulatory Affairs, pursuant to authority set forth in Article III of Reorganization Plan No. 1 of 1983, effective March 31, 1983, and Mayor's Order 83-92, effective April 7, 1983; section 6(h) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District, and for other purposes, approved April 14, 1906 (34 Stat. 114; D.C. Official Code § 42-3131.06(h) (2010 Repl.)), and Mayor's Order 2002-33, effective February 11, 2002; and section 104 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 (2007 Repl.)), hereby gives notice of the adoption, on an emergency basis, of the following amendments to titles 14 (Housing) and 16 (Consumers, Commercial Practices, and Civil Infractions) of the District of Columbia Municipal Regulations (DCMR).

This emergency rulemaking is necessary to bring enforcement regulations in line with sections 2062 and 2071 of the Fiscal Year 2011 Budget Support Act of 2010, effective September 24, 2010 (D.C. Law 18-223; 57 DCR 6242). Additionally, this rulemaking is necessitated by the immediate need to establish enforcement provisions for the Department of Consumer and Regulatory Affairs' Summer Grass and Trash Program, which will commence on May 1, 2011.

The Director also gives notice of intent to take final rulemaking action to adopt these rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*, with the exception of the amendments to sections 3305 and 3306 of Title 16 of the DCMR. Pursuant to section 104 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), a proposed resolution to approve the amendments to sections 3305 and 3306 will be submitted to the Council of the District of Columbia and final rulemaking action to adopt sections 3305 and 3306 will be taken no earlier than the later of thirty (30) days after the date of publication of this notice in the *D.C. Register* and Council approval of the proposed resolution.

This emergency rulemaking was adopted on March 29, 2011, and became effective on that date. This emergency rulemaking will remain in effect for up to one hundred and twenty (120) days, unless earlier superseded by a notice of final rulemaking.

Title 14, HOUSING, of the District of Columbia Municipal Regulations is amended as follows:

Section 102, ENFORCEMENT PENALTIES, of chapter 1, ADMINISTRATION AND ENFORCEMENT, is amended to read as follows:

102 ENFORCEMENT AND PENALTIES

102.1 Any person, other than a person licensed as a housing business under authority of D.C. Official Code § 47-2828 (2001) and chapter 2 of this subtitle, who fails to

comply with any provision of this subtitle after expiration of the time for compliance established in accordance with this subtitle shall, upon conviction, be punished by a fine not to exceed three hundred dollars (\$300), or by imprisonment for not more than ninety (90) days, in lieu of, or in addition to, any fine, for such failure to comply.

- 102.2 No further penalties shall be imposed under subsection 102.1 for an offense during the period in which an appeal from a criminal conviction of that offense is pending.
- 102.3 Any person licensed as a housing business under authority of D.C. Official Code § 47-2828 (2001) and chapter 2 of this subtitle, who fails to comply with any provision of this subtitle shall, upon conviction, be punished by a fine not to exceed three hundred dollars (\$300) or imprisonment for not more than ninety (90) days for each such failure to comply.
- 102.4 Civil fines, penalties, and fees may be imposed as additional sanctions to criminal prosecution or other civil actions for a violation of this chapter or chapters 2 through 14 of this subtitle, pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 (D.C. Official Code § 2-1801 *et seq.*). Adjudication of an infraction of this chapter or chapters 2 through 14 of this subtitle shall be pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985.
- 102.5 In addition to other penalties authorized by statute or regulation, the code official may serve one (1) or more of the following notices, which may impose a fine or other penalty, on an owner of a property that is in violation of the provisions of the Housing Regulations:
- (a) A notice of violation;
 - (b) A notice of infraction;
 - (c) A combined notice of violation and notice of infraction; or
 - (c) Any other orders or notices authorized to be issued by the code official.
- 102.6 Any person, including a tenant, who causes a violation of any provision of this subtitle is subject to the same penalties as those provided in this section.
- 102.7 In the event of any failure to comply with any provision of this subtitle, each and every day such violation continues shall constitute a separate offense.
- 102.8 The penalties prescribed in subsections 102.1 and 102.3 shall be applicable to each separate offense, except as provided in subsection 102.2.
- 102.9 The violation of a provision of this subtitle or the failure to comply with a requirement of this subtitle shall also be grounds for the institution of proceedings

for revocation of a license issued under chapter 3 of this title, as provided in the General License Act (D.C. Official Code §§ 47-2801 *et seq.*).

Section 105 is repealed and replaced with:

105 HOUSING AND CONSTRUCTION CODES VIOLATIONS.

- 105.1 Whenever a duly designated agent of the District finds reasonable grounds to believe that there exists a violation of a provision of this subtitle or a provision of the International Property Maintenance Code, as amended by the District of Columbia Property Maintenance Code Supplement in title 12 of the District of Columbia Municipal Regulations, he or she may, either singularly or in combination:
- (a) Issue a notice of violation, which may afford the person responsible for the correction of the violation an opportunity to abate the violation;
 - (b) Issue a notice of infraction, assessing a fine for the presence of the violation;
 - (c) Issue a combined notice of violation and notice of infraction; and/or
 - (d) Issue any other order or notice authorized to be issued by the code official.
 - (e) Effect summary correction of the violation, as authorized by law.
- 105.2 A notice of violation or order shall direct the discontinuance of the illegal action or condition or the abatement of the violation.
- 105.3 Issuance of a notice of violation, notice of infraction, or combined notice of violation and notice of infraction pursuant to this section, prior to taking other enforcement action, is at the discretion of the code official. Failure to issue a notice of violation, notice of infraction, or combined notice of violation and notice of infraction shall not be a bar or a prerequisite to criminal prosecution, civil action, corrective action, or civil infraction proceeding based upon a violation of the Housing Regulations.
- 105.4 Each notice of violation shall:
- (a) Be in writing:
 - (a) State the nature of the violation;
 - (b) Indicate the section or sections of this subtitle or the International Property Maintenance Code, as amended by the District of Columbia Property Maintenance Code Supplement being violated;
 - (c) Allow a reasonable time for the performance of any act required by the notice; and
 - (d) Be signed by the Director or the Director's authorized agent.
- 105.5 Each notice shall be served upon the person or persons responsible for correcting the violation described in the notice.

- 105.6 Service of the notice may be effected upon the owner of the premises by those methods outlined in section 3 of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (34 Stat. 114; D.C. Official Code § 42-3131.03).

Section 800, GENERAL PROVISIONS, of chapter 8, HOUSING CODE: CLEANLINESS, SANITATION, AND SAFETY, is amended to read as follows:

800 GENERAL PROVISIONS

- 800.1 All premises occupied for residential purposes shall be kept in a clean, safe, and sanitary condition, including, but not limited to, the requirements of this chapter.
- 800.2 Floors, floor coverings, and other walking surfaces shall be clean and free of dirt, dust, filth, garbage, human or animal wastes, litter, refuse, or any other insanitary matter.
- 800.3 Walls, ceilings, windows, and doorways shall be clean and free of cobwebs, dirt, dust, greasy film, soot, or any other insanitary matter.
- 800.4 Plumbing fixtures shall be kept in a clean, sanitary condition, and shall be kept free of dirt, filth, human or animal wastes, or any other insanitary matter. Each occupant shall exercise care in the proper use and operation of plumbing fixtures.
- 800.5 Areaways, walkways, and yards shall be clean and free of ashes, filth, garbage, human or animal wastes, litter, refuse, or any other insanitary matter.
- 800.6 Other portions of each premises which are not specifically listed in this section shall be kept clean, and in a safe and sanitary condition.
- 800.7 The owner, user, or any person having the right to use any private passageway or alley, shall not permit any ashes, debris, dirt, filth, garbage, human or animal waste, litter, refuse, stagnant water, or any other insanitary matter to remain on that passageway or alley.
- 800.08 The owner of any premises shall maintain the premises free of any condition that may render the premises unhealthy or unsanitary for the occupant, the neighborhood or the community at large pursuant to An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District, and for other purposes, approved April 14, 1906 (34 Stat. 114, ch. 1626; D.C. Official Code § 42-3131 et seq.).
- 800.09 Premises maintained in violation of this chapter create a danger to the health, welfare or safety of the occupants and public, and, constitute a public nuisance.
- 800.10 The following types of vegetative growth are prohibited:

- (a) Vegetative growth that exceeds ten (10) inches in height or is untended;
- (b) Shrubbery that is a detriment to the health, safety, or welfare of the public;
- (c) Vegetative growth, regardless of height, that creates a harbor or concealment, including hiding places for persons and harbors or concealments for refuse or trash;
- (d) Vegetative growth that harbors, or provides a refuge for, snakes, rodents, or other vermin, including rats and mice;
- (e) Vegetative growth that creates an unpleasant or noxious odor;
- (f) Vegetative growth that constitutes a fire hazard;
- (g) Vegetative growth that creates a breeding place for mosquitoes; and
- (h) Vegetative growth that is dead or diseased.

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

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

800.13 The accumulation of trash on a premises shall constitute an unsanitary and unhealthy condition if it creates a:

- (a) Harbor or concealment (including hiding places for persons);
- (b) Harbor or refuge for snakes, rodents, or other vermin, including rats and mice;
- (c) Noxious or unpleasant odor; or
- (d) Fire hazard.

800.14 In addition to other penalties authorized by statute or regulation, the code official may serve one (1) or more of the following notices, which may impose a fine or other penalty, on an owner of property in violation of the provisions of this chapter:

- (a) A notice of violation;

- (b) A notice of infraction;
- (c) A combined notice of violation and notice of infraction; or
- (d) Any other order or notice authorized to be issued by the code official.

800.15 Issuance of a notice of violation, notice of infraction, or combined notice of violation and notice of infraction pursuant to this section, prior to taking other enforcement action, is at the discretion of the code official. Failure to issue a notice of violation, notice of infraction, or combined notice of violation and notice of infraction shall not be a bar or a prerequisite to criminal prosecution, civil action, corrective action, or civil infraction proceeding based upon a violation of this chapter.

800.16 The owner of the premises may give written consent to the Mayor or his designee authorizing the removal of trash or the mowing of weeds or grass pursuant to a Notice of Violation requiring abatement of a prohibited condition. By giving such written consent, the owner waives the right to an administrative hearing challenging the Mayor's action.

800.17 Pursuant to this chapter, the Mayor or his designee is authorized to take summary abatement action to correct a violation of this chapter where a condition exists that imminently endangers the health, safety or welfare of the occupant of the premises or the public.

800.18 If the owner of any premises is issued a Notice of Violation but fails to comply with the Notice of Violation, and another Notice is issued for the same condition during the same growing season, the District may summarily abate the nuisance.

800.19 If the code official, in his or her discretion, decides to serve a notice of violation, the notice of violation shall state:

- (a) The reason or reasons that support the notice of violation;
- (b) That the owner of the premises must comply with the requirements of the notice no later than seven (7) days after the date of receipt of the notice, unless within that time the notice has been appealed;
- (c) That if the owner does not comply with the requirements of the notice or appear the notice within the seven (7)-day period, the District may abate the violation on its own, without the consent of the owner; and
- (d) That the costs for such abatement shall be assessed against the owner of the premises and that failure to pay such costs may result in a lien being placed upon the premises without further notice to the owner.

- 800.20 Service of the notice of violation may be effected upon the owner of the premises by those methods outlined in section 3 of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (34 Stat. 114; D.C. Official Code § 42-3131.03).
- 800.21 Civil fines, penalties and fees may be imposed as an alternative sanction for any infraction of the provisions of this chapter, or of any rules or regulations issued under the authority of this chapter, pursuant to Titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985. Adjudication of any infraction of this chapter shall be pursuant to Titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985.
- 800.22 If the Mayor or his designee must summarily abate a nuisance as set forth in this chapter, he or she is authorized to assess the fair market value of the correction or the actual costs of the correction, whichever is higher, and all expenses as a tax on the premises from which the condition arose as provided in the Act. The tax shall be carried on the District tax roll as a general tax.
- 800.23 Interest shall accrue on any unpaid bill at the rate of one and a half percent (1 1/2%) per month, or part thereof, from the date of the bill pursuant to D.C. Official Code § 47-1205(a).
- 800.24 The revolving fund established, pursuant to the Act (D.C. Official Code § 6-711.01 (b)(1)) provides funding for the abatement of nuisances in the District, and for other purposes. Monies in the revolving fund shall be available to cover the cost of correcting nuisances and other incidentals that may arise in enforcing any action authorized by this chapter or the Act. Any amount assessed and collected as a tax against real property pursuant to this chapter shall be deposited to the credit of the revolving fund.

Section 899, DEFINITIONS, of chapter 8, HOUSING CODE: CLEANLINESS, SANITATION, AND SAFETY, is amended as follows:

Subsection 899.1 is amended by adding the following term and definition after “Unintended Premises”:

Vegetative growth – vegetation of all types, including weeds, poison ivy, poison oak, poison sumac, kudzu, plants with noxious odors, and grasses causing hay fever.

Chapter 66, COVERAGE AND REGISTRATION OF VACANT BUILDINGS, is repealed.

Chapter 67, REGISTERED AGENT, is repealed.

Chapter 68, VACANT BUILDING MAINTENANCE STANDARD, is repealed.

Title 16, CONSUMERS, COMMERCIAL PRACTICES, AND CIVIL INFRACTIONS, of the District of Columbia Municipal Regulations is amended as follows:

Section 3305, HOUSING INSPECTION DIVISION INFRACTIONS, subsection 3305.3(mm) and (nn) is amended to read as follows:

- (mm) 14 DCMR § 800.10 (serious prohibited vegetative growth, for example, grass/weeds exceeding ten (10) inches in height, creating a harbor for rodents, or shrubbery that is a detriment to the health, safety, or welfare of the public);
- (nn) 14 DCMR § 800.13 (serious accumulation of trash, rubbish, or garbage in or on any premises shall constitute an insanitary and unhealthy condition);

Section 3305.4 is amended by adding the following subsections to read as follows:

- (hh) 14 DCMR § 800.10 (minor prohibited vegetative growth, for example grass/weeds exceeding ten (10) inches in height, creating a harbor for rodents, or shrubbery that is a detriment to the health, safety, or welfare of the public);
- (ii) 14 DCMR § 800.13 (minor accumulation of trash, rubbish, or garbage in or on any premises shall constitute an insanitary and unhealthy condition).

Section 3311, VACANT PROPERTY INFRACTIONS, is amended to read as follows:

- 3311.1 Violation of any of the following provisions shall be a Class 1 infraction:
- (a) Section 6(a) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.06(a)) (failure to initiate registration of a vacant building within thirty (30) days after a building becomes vacant);
 - (b) Section 6(e) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District, effective April 27, 2001 (D.C. Law 13-281; D.C. Official Code § 42-3131.06(e)) (failure to report change of name or address of owner within thirty (30) days of occurrence);
 - (c) Section 7(a) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.07(a)) (failure to allow inspection of vacant building);
 - (d) Section 7(a)(5) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.07(a)(5)) (making false statements or misrepresentations upon the registration application); or
 - (e) Being designated by the Mayor as a “blighted vacant building” (D.C. Official Code § 42-3131.05(1)).

- 3311.2 Violation of any of the following provisions shall be a Class 2 infraction:
- (a) Section 6(a) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.06(a)) (failure to pay appropriate registration fees);
 - (b) Section 6(b) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.06(b)) (failure to apply for registration after exemption status expires);
 - (c) Section 6(d) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.06(d)) (failure to apply for new registration after registered building is transferred or otherwise conveyed);
 - (d) Sections 6(a) and 12 of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code §§ 42-3131.06(a) and 42-3131.12) (failure to maintain a vacant building in compliance with the requirements of D.C. Official Code § 42-3131.12);
 - (e) Section 7(a) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.07(a)) (failure to timely renew registration status);
 - (f) Section 7(a)(2)(A) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.07(a)(2)(A)) (vacant property is detrimental to the public health, safety and welfare);
 - (g) Section 7(a)(2)(B) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.07(a)(2)(B)) (property unreasonably interferes with the reasonable and lawful use and enjoyment of other premises within the neighborhood);
 - (h) Section 7(a)(2)(C) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.07(a)(2)(C)) (poses a hazard to police officers or fire fighters entering the building in an emergency);
 - (i) Section 7(a)(3) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.07(a)(3)) (the building fails to comply with the fire, building and housing codes of the District); or
 - (j) Section 8 of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.08) (proceeding with any operation related to registration after notice of revocation is issued).

3311.3 Violation of any of the following provisions shall be a Class 3 infraction:

- (a) Section 12(1) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.12(1)) (doors, windows, areaways, and other openings are not weather tight and secured against entry by birds, vermin, and trespassers; or missing or broken doors, windows and other openings are not covered with one-half (1/2) inch CDX plywood that is weather protected, tightly fitted to the opening, and secured by screws or bolts);
- (b) Section 12(2) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.12(2)) (the roof and flashing are not sound and tight, will admit moisture, or are not drained to prevent dampness or deterioration in the walls or interior);
- (c) Section 12(3) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.12(3)) (the building storm drainage system is not adequately sized and installed in an approved manner and functional);
- (d) Section 12(4) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.12(4)) (the interior or exterior are not maintained in good repair, structurally sound, free from debris, rubbish and garbage, and sanitary so as not to threaten public health or safety);
- (e) Section 12(5) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.12(5)) (the structural members are not free of deterioration and capable of safely bearing imposed dead and live loads);
- (f) Section 12(6) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.12 (6)) (the foundation walls are not plumb, free from open cracks and breaks, or vermin proof);
- (g) Section 12(7) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.12(7)) (the exterior walls are not free of graffiti, holes, breaks, or loose and/or rotting materials, and exposed metal and wood surfaces are not protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint);
- (h) Section 12(8) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.12(8)) (the cornices, belt courses, corbels, terra cotta trim, wall facings, and similar decorative features are not safe, anchored, and in good repair, and exposed metal and wood surfaces are not protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint);

- (i) Section 12(9) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.12(9)) (all balconies, canopies, marquees, signs, metal awnings, stairways, fire escapes, standpipes, exhaust ducts, and similar features are not in good repair, anchored, safe and sound, and exposed metal and wood surfaces are not protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint);
- (j) Section 12(10) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.12(10)) (chimneys, cooling towers, smokestacks, and similar appurtenances are not structurally safe, sound, and in good repair, and exposed metal and wood surfaces are not protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint);
- (k) Section 12(11) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.12(11)) (openings in sidewalks are not safe for pedestrian travel);
- (l) Section 12(12) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.12(12)) (accessory and appurtenant structures such as garaged, sheds, and fences are not free from safety, health and fire hazards, including graffiti);
- (m) Section 12(13) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.12(13)) (the property on which a structure is located is not clean, safe, and sanitary and threatens the public health or safety); or
- (n) Section 13 of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District (D.C. Official Code § 42-3131.13) (failure to allow or maintain the affixing to the vacant building of a sign posted by the Mayor or the Department of Consumer and Regulatory Affairs).

All persons desiring to comment on these proposed regulations should submit comments in writing to Helder Gil, Legislative Affairs Specialist, Department of Consumer and Regulatory Affairs, 1100 Fourth Street, SW, Room 5164, Washington, D.C. 20024, or by e-mail to helder.gil@dc.gov, not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of the proposed rules can be obtained from the address listed above. A copy fee of one dollar (\$1) will be charged for each copy of the proposed rulemaking requested. Free copies are available on the DCRA website at dcra.dc.gov by going to the “About DCRA” tab, clicking “News Room”, and clicking on “Rulemaking.”