

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in Section 104 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 (“the Act”), effective October 5, 1985, (D.C. Law 6-42; D.C. Official Code § 2-1801.05) (2012 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)(8) and (b)) (2012 Repl.), and Mayor’s Order 2004-46(2) and (3)(v), dated March 22, 2004, hereby gives notice of amendments to Chapter 36 (Department of Health (DOH) Infractions), Title 16 (Consumers, Commercial Practices, & Infractions) of the District of Columbia Municipal Regulations (DCMR).

These rules establish a new Section 3626 schedule of fines for tanning facilities, to correspond with the new Notice of Final Rulemaking for Tanning Facility Regulations in Subtitle F of Title 25 of the DCMR, which were published in the *D.C. Register* on March 15, 2013 at 60 DCR 3582.

On August 16, 2013, the Notice of Proposed Rulemaking was published in the *D.C. Register* at 60 DCR 11957. The Department of Health received one comment but no changes were made to the proposed rules. These rules were adopted by the Director on October 10, 2013 and will take effect immediately upon publication of this notice in the *D.C. Register*.

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

3626 TANNING FACILITY INFRACTIONS

3626.1 Reserved

3626.2 Violations of the following provisions shall be a Class 2 infraction:

- (a) Operating with extensive fire damage that affects the tanning facility’s ability to comply with these regulations;
- (b) Operating with serious flood damage that affects the tanning 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 incorrect hot water temperatures that cannot be corrected during the course of the inspection in violation of Section 502.1;
- (e) 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 412.2 and 502.1;

- (f) Operating with a plumbing system supplying potable water that may result in contamination of the potable water;
- (g) Operating with a sewage backup or sewage that is not disposed of in an approved and sanitary manner;
- (h) 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, or fire suppression system;
- (i) Operating with a back siphonage event;
- (j) Operating with toilet or handwashing facilities that are not properly installed;
- (k) 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;
- (l) Operating with the presence of any unapproved pesticide residues in the interior building areas of a tanning facility, in food storage or service areas contained within the tanning facility, or in the presence of any food in the facility; or in the presence of excessive restricted-use pesticide in any outdoor area of a tanning facility; or any evidence of the indiscriminate use of a pesticide or herbicide which may be injurious to the health of humans;
- (m) Operating with equipment that by condition, design, construction, or use poses an immediate risk of entrapment, fall, puncture, pinch, crush, trip, or other injuries;
- (n) Operating with environmental surfaces, including but not limited to tanning beds, stand-up tanning booths, cabinets, or vertical tanning devices, supplies, pillows, linens, garments, other items within a tanning facility that are stained with blood or bodily fluids, or soiled; or infested with vermin; or are in an otherwise unsanitary condition;
- (o) Operating with gross insanitary occurrence or condition that may endanger public health including but not limited to an infestation of vermin;
- (p) Failing to eliminate the presence of insects, rodents, or other pests on the premises in violation of Sections 612 or 613;
- (q) Operating a tanning facility without a license in violation of Section 800.1;

- (r) Operating a tanning facility with an expired license in violation of Section 800.2;
- (s) Operating a tanning facility with a suspended license in violation of Section 800.2;
- (t) Operating a tanning facility without a valid Certificate of Occupancy in violation of Section 800.3;
- (u) Selling, leasing, transferring, loaning, assembling, certifying, recertifying, upgrading, installing, servicing, or repairing tanning equipment or devices without a valid tanning service provider registration in violation of Section 800.4;
- (v) Furnishing or offer to furnish tanning equipment, devices, or associated components, such as bulbs and filters, in the District without a valid tanning service provider registration issued by the Mayor in violation of Section 800.5;
- (w) Using a tanning service provider company that is not registered in the District in violation of Section 800.6;
- (x) Operating a tanning facility in the District without obtaining a valid District-issued Tanning Facility Manager Identification Card issued by the Department in violation of Section 800.7;
- (y) Operating a tanning facility without required warning statements in violation of Section 804.4;
- (z) Operating a tanning facility without a manager or operator who is on duty and on the premises during all hours of operation in violation of Section 200.2;
- (aa) Failing to allow access to DOH representatives during the facility's hours of operation and other reasonable times as determined by the Department in violation of Section 900.2;
- (bb) Hindering, obstructing, or in any way interfering with any inspector or authorized Department personnel in the performance of his or her duty; and
- (cc) Operating in violation of any provision specified in Chapter 12.

3626.3

Violations of any of the following provisions in Chapter 2 (Supervision and Training) of Subtitle F, Title 25 of the DCMR shall be a Class 3 infraction:

- (a) Allowing more than one (1) customer in a tanning room at a time in violation the authorized exceptions in Section 201.2;
- (b) Maintaining the interior temperature of the tanning facility in excess of one hundred degrees Fahrenheit (100 °F) (thirty-eight degrees Celsius (38 °C)) at any time in violation of Section 201.3;
- (c) Failing to maintain protective eyewear in optimal condition or properly sanitized in violation of Section 201.5;
- (d) Failing to set timers on ultraviolet tanning equipment or devices within plus or minus ten percent ($\pm 10\%$) of any selected time interval in violation of Section 201.7;
- (e) Maintaining timer at a remote location so that customers cannot set their own exposure time in violation of Section 201.7;
- (f) Failing to limit the maximum exposure time on ultraviolet tanning equipment or devices recommended by the manufacturer in violation of Section 201.8;
- (g) Failing to provide a copy of the "Warning Statement" identified in Section 302.4 to customers during their initial visit, and annually in violation of Sections 201.9, 300.6(a), and 300.7(a);
- (h) Failing to require customers' review, sign and date the required Acknowledgment before using the facility's tanning equipment or devices in violation of Section 201.10;
- (i) Failing to obtain a signed and dated "Parental/Legal Guardian Authorization Form" provided to them by the facility before a minor's use of the facility's tanning equipment or devices as specified in Section 201.11; and
- (j) Failing to have staff read to the "Warning Statement" and "Parental/Legal Guardian Authorization Form" to customers who are illiterate, or visually impaired prior to the customer's use or a customer's minor child's use of the facility's tanning equipment or devices in violation of Section 201.12.

3626.4

Violations of any of the following provisions in Chapter 3 (Standard Policies & Operating Procedures and Recordkeeping) of Subtitle F, Title 25 of the DCMR shall be a Class 3 infraction:

- (a) Failing to prohibit minors younger than fourteen (14) years of age from using ultraviolet tanning equipment or devices in violation of Section 300.4;

- (b) Failing to prohibit minors between fourteen (14) and seventeen (17) years of age from using ultraviolet tanning equipment or devices without a valid “Parental/Legal Guardian Authorization Form” on file in violation of Section 300.5;
- (c) Failing to require a minor’s parent or legal guardian to sign and date the “Parental/Legal Guardian Authorization Form” in the presence of the tanning facility operator in violation of Sections 300.6(b) and 300.7(b);
- (d) Failing to require a parent or legal guardian accompany a minor when using the facility’s tanning equipment or devices in violation of Section 300.7(c);
- (e) Permitting an infant or other minor in a tanning area being used by a parent or legal guardian in violation of Section 300.8;
- (f) Failing to post the required Age Restriction Sign at or near the reception area in violation of Section 301.1;
- (g) Failing to post the required warning sign with capital letters at least five millimeters (5 mm) high and all lower case letters at least three millimeters (3 mm) high in violation of Section 302.4;
- (h) Failing to maintain a procedural manual with required contents at the tanning facility which is available at all times to operators and the Department during inspections in violation of Sections 303.1 and 303.2; and
- (i) Failing to maintain customer files, maintenance records, and Incident Logs in violation of Sections 303.3, 303.4, 303.5, 304, 305, and 306.

3626.5

Violations of any of the following provisions in Chapter 4 (Construction, Sanitation & Maintenance, Prevention of Contamination, and Water Source, Quality and Capacity) of Subtitle F, Title 25 of the DCMR shall be a Class 3 infraction:

- (a) Failing to use only tanning equipment and devices that comply with the District’s Tanning Facility Regulations and all applicable District and Federal laws and regulations, including those promulgated by the Federal Trade Commission and the United States Food and Drug Administration in violation of Section 400.1, 400.2, and 400.3;
- (b) Providing tanning equipment and devices without ground fault protection on the electrical circuit, or other methods for preventing shock in violation of Section 400.2;
- (c) Failing to provide an emergency shut-off mechanism on tanning equipment and devices to allow the consumer to manually terminate radiation emission

at any time without disconnecting the electrical plug or removing any ultraviolet lamp in violation of Section 400.4;

- (d) Providing tanning equipment and devices without physical barriers to protect consumers from injury induced by touching or breaking the lamps in violation of Section 400.6;
- (e) Failing to prevent line-of-sight, accidental ultraviolet radiation exposure of persons not using the tanning equipment or devices with the required physical barriers in violation of Section 400.7;
- (f) Failing to have compliant protective eyewear for consumers desiring to use tanning equipment or devices but who do not have their own in violation of Section 401.1;
- (g) Permitting a consumer who has refused to accept compliant protective eyewear offered by the licensee when he or she does not have his or her own or who has vocalized a refusal to use compliant protective eyewear offered by the licensee or his or her own compliant protective eyewear to use any tanning equipment in violation of Section 401.2;
- (h) Possessing protective eyewear that does not meet FDA requirements stated in 21 C.F.R. § 1040.20(c)(4) (Sunlamp products and ultraviolet lamps intended for use in sunlamp products, Protective eyewear) in violation of Section 401.3;
- (i) Failing to provide tanning equipment and devices with timers that comply with the requirements of 21 C.F.R. § 1040.20(c)(2) (Sunlamp products and ultraviolet lamps intended for use in sunlamp products, Timer system in violation of Section 402.1;
- (j) Providing tanning equipment and devices with timers that exceed manufacturer's recommended exposure schedule or that exceed plus or minus ten percent ($\pm 10\%$) of the maximum timer interval for the product in violation of Sections 402.2 and 402.3;
- (k) Providing tanning equipment and devices with timers that automatically reset and cause radiation emission to resume for a period greater than the unused portion of the timer cycle when emission from the tanning device has been terminated in violation of Section 402.4;
- (l) Failing to provide an override timer control outside of the room in which tanning equipment or device is located in violation of Section 402.5;
- (m) Operating a new tanning facility without remote timers installed in violation of Section 402.8;

- (n) Permitting the operation of a remote timer by staff that is not trained in violation of Section 402.6;
- (o) Permitting consumers to set or reset their own exposure time with the convenient location of the remote timer in violation of Section 402.6;
- (p) Failing to install remote timer control system on existing tanning equipment or devices not equipped with a remote timer control system within one (1) year of the effective date of the Tanning Facility Regulations in violation of Section 402.9;
- (q) Providing stand-up tanning booths without physical barriers or other means compliant with 21 C.F.R. § 1040.20 (Sunlamp products and ultraviolet lamps intended for use in sunlamp products, such as floor markings, to indicate the manufacturer's recommended exposure distance between the ultraviolet lamps and the consumer's skin) in violation of Section 403.1;
- (r) Failing to maintain temperatures inside of enclosed tanning booths or cabinets or vertical tanning devices below one hundred degrees Fahrenheit (100 °F) (thirty-eight degrees Celsius (38 °C)) in violation of Section 403.2;
- (s) Failing to construct stand-up tanning booths or cabinets or vertical tanning devices to withstand the stress of use and the impact of a falling person in violation of Section 403.3;
- (t) Failing to construct stand-up tanning booths or cabinets or vertical tanning devices with doors that are non-locking, and that open outwardly in violation of Section 403.4;
- (u) Failing to construct stand-up tanning booths or cabinets or vertical tanning devices with non-slip floors that are easily clean and sanitized in violation of Sections 403.5, 403.6, and 403.7;
- (v) Failing to maintain stand-up tanning booths or cabinets or vertical tanning devices in good condition in violation of Section 403.8;
- (w) Making, selling, leasing, transferring, lending, repairing, assembling, recertifying, upgrading, or installing tanning equipment, devices, or lamps, or providing supplies used in connection with such equipment, devices or lamps that properly installed and used do not meet the requirements specified in Sections 405, 406, 407, and 408 in violation of Section 404.1;
- (x) Failing to shield ultraviolet lamp contained within a sunlamp with two (2) one-piece covers (top and bottom) without cracks or breaks in the acrylic surfaces to prevent contact with the user in violation of Section 405.1;

- (y) Failing to use only replacement lamps certified by the FDA as “equivalent” lamps in compliance with 21 C.F.R. § 1040.20 (Sunlamp products and ultraviolet lamps intended for use in sunlamp products, and shall be in the form of user instructions) in violation of Section 406.1;
- (z) Using tanning equipment or devices with defective lamps or filters in violation of Section 406.3;
- (aa) Failing to replace ultraviolet lamps, bulbs or filters as recommended by the manufacturer or as soon as they become defective or damaged in violation of Section 406.5;
- (bb) Failing to use only lamps, bulbs, or filters that meet the requirements of the FDA for a particular tanning bed may be used in tanning facilities in violation of Section 406.6;
- (cc) Failing to maintain tanning equipment and devices in good condition or sanitized tanning equipment and devices after each use in violation of Sections 201.4, 407.1, 408.1, 408.2, and 408.3;
- (dd) Failing to perform quarterly maintenance tests on each assembly of tanning equipment or device, and document in writing timer calibrations and consumers ability to manually terminate radiation emissions in violation of Sections 407.2, 407.3, and 407.4;
- (ee) Failing to measure the strength of the sanitizing solution at least twice per day of tanning facility operation to ensure sufficient strength of the sanitizing solution in violation of Section 408.4;
- (ff) Failing to maintain adequate supplies for cleaning and sanitizing of all tanning equipment and devices in violation of Section 408.5;
- (gg) Operating with a water supply that is not approved by the Department in violation of Section 409;
- (hh) Operating with insufficient water capacity to meet the water demands of the tanning facility in violation of Section 412.1; and
- (ii) Operating with insufficient hot water capacity to meet the peak hot water demands throughout the tanning facility in violation of Section 412.2.

3626.6

Violations of the District’s Tanning Facility Regulations in Subtitle F, Title 25 of the DCMR, which are not cited elsewhere in Section 3626 shall be deemed Class 4 infractions.