

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MEMORANDUM

To: Office of Documents and Administrative Issuance

From: Sharon S. Schellin *SS*
Secretary to the Zoning Commission

Date: February 13, 2008

Re: Publication for the Office of Zoning

Please publish the following in the *D C Register* on February 22, 2008:

1. Z.C. Notice of Final Rulemaking & Order No. 05-05; and
2. Z.C. Notice of Final Rulemaking & Order No. 07-19.

Attachment

Office of
Document and
Administrative
Issuances
2008 FEB 13 AM 11:39

ZONING COMMISSION
District of Columbia

CASE NO. 05-05
EXHIBIT NO. 14

2008 FEB 13 AM 11:39

RULEMAKING TRANSMITTAL FORM

TYPE OF RULEMAKING ACTION: ☐ EMERGENCY RULES
☒ FINAL RULES ☐ PROPOSED RULES ☐ COMBINED

DATE AND TIME RECEIVED
Office of Documents use only

AGENCY: OFFICE OF ZONING

AGENCY REPRESENTATIVE: SHARON SCHELLIN

ADDRESS: 441 4th Street, N.W., Suite 210 South

TELEPHONE: 727-0340

TITLE AND DESCRIPTION OF RULES: Z.C. Case No. 05-05: Text Amendment - 11 DCMR: Emergency Shelters in the C-M-1 and C-M-2 (Commercial-Light Industrial) Districts

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: Title 11 (Zoning) §§ 801.11, 802.1, 802.28, 821.3.

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: 54 DCR 2378 DATE: MARCH 16, 2007

COMPLETE CITATION to the statute, regulation, or other legal authority which specifically authorizes the issuance of the substance of these rules: Section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799 D.C. Official Code § 6-641.01).

LEGAL CERTIFICATION: I certify that I have reviewed the attached rulemaking and, in my opinion, the substance of the text of the rules is legally sufficient

DATE: JANUARY 17, 2008

SIGNED: *Alan Reapton for*

PHONE: (202) 442-9777

☒ FINAL ☐ CONDITIONAL

NAME: PETER J. NICKLES

TITLE: INTERIM ATTORNEY GENERAL

PROMULGATOR: Name and title of the person legally authorized to adopt and promulgate these rules (or the name of the board or other body authorized to adopt rules by vote)
Zoning Commission For The District Of Columbia Title:

COMPLETE CITATION to the statute, regulation, order, or other legal authority that specifically authorizes this person or agency to adopt and promulgate these rules Section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799 D.C. Official Code § 6-641.01).

SIGNATURE OF THE PERSON AUTHORIZED TO ADOPT RULES OR ATTEST TO THE ADOPTION OF RULES

DATE OF APPROVAL 12-10-07
OF VOTE:

APPROVAL
OF ATTEST:

Sharon J. Schellin
Secretary to the Zoning

TITLE: Commission

PHONE: (202) 727-0340

Office of Documents
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THIS NOTICE
PUBLISHED AT:

VOL:

DCR:

DATE:

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 05-05
Z.C. Case No. 05-05
(Text Amendment - 11 DCMR)
(Emergency Shelters in the C-M-1 and C-M-2 (Commercial-Light Industrial) Districts)
December 10, 2007**

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01), having held a public hearing and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District of Columbia Charter, hereby gives notice of the adoption of the following amendments to Chapter 8 of the Zoning Regulations (Title 11 DCMR).

The amendments permit emergency shelters to locate in certain Commercial-Light Manufacturing (C-M) Districts if approved as a special exception by the Board of Zoning Adjustment.

A Notice of Proposed Rulemaking was published in the *D C Register* on March 16, 2007, at 54 DCR 2378. The Commission took final action to adopt the amendments at a public meeting on December 10, 2007. In doing so it made changes to the proposed text as will be explained in this Order. This final rulemaking is effective upon publication in the *D C Register*.

Existing Regulations

The Zoning Regulations define an "emergency shelter," as.

A facility providing temporary housing for one (1) or more individuals who are otherwise homeless and who are not in need of a long-term sheltered living arrangement, as that arrangement is defined in the Health Care Facilities and Community Residence Regulations 22 DCMR § 3099.1 (1986)(superseded).

The current Zoning Regulations permit emergency shelters as shown in the following table.

ZONE	MATTER-OF-RIGHT	SPECIAL EXCEPTION
R-1	1-4 persons	5-15 persons 15+ persons
R-2, R-3, R-4	1-4 persons	5-15 persons 15+ persons
R-5, SP, C-R, W-1, W-2, W-3	1-4 persons	5-25 persons 25+ persons
C-1	1-7 persons	5-15 persons 15+ persons
C-2	1-7 persons	5-25 persons 25+ persons
C-3, C-4, C-5	No Limit	N/A
C-M, M, W-0	Not Permitted	Not Permitted

Description of the Text Amendment

The amendments permit emergency shelters to locate in the C-M-1 and C-M-2 Commercial-Light Manufacturing (C-M) Districts, if approved as a special exception by the Board of Zoning Adjustment ("BZA"), and establishes standards for the BZA to apply when deciding the special exception applications. Emergency shelters would still be prohibited in the C-M-3 and M Districts. The amendments also permit an existing emergency shelter located at 2210 Adams Place, NE to operate as a matter-of-right use, if the shelter obtains a Certificate of Occupancy within one year.

Relationship to the Comprehensive Plan

The amendments are not inconsistent with the Comprehensive Plan.

The Office of Planning ("OP") submitted a report explaining the consistency of the amendments with the Comprehensive Plan in effect when the Commission held its hearing.

The OP report stated that the amendments advance the Comprehensive Plan's major theme of, "[p]roviding for Diversity and Overall Social Responsibilities," 10 DCMR § 111, and are fully consistent with the following provisions of the Comprehensive Plan pertaining to that theme:

- "Each distinct neighborhood of the District is an integral part of a diverse larger community that contributes to the District attractiveness and strength." 10 DCMR § 111.1;
- "Although many residents have sufficient means or individual support systems to be self-reliant, other residents are periodically more dependent on the larger community for support or assistance in their daily living." 10 DCMR § 111.1(a);
- "While the District must strive to increase educational, employment, and other opportunities to reduce such dependency, all neighborhoods should share in the overall

social responsibilities of the community including but not limited to, housing the homeless, feeding the hungry, accommodating the disabled, and welcoming residents of diverse backgrounds and needs.” 10 DCMR § 111 1(b).

The report also stated that the amendments advance the policy of the Human Services and Housing elements of the Comprehensive Plan that there should be a, “[f]ocus the full range of health and social services on major problems facing the District, such as infant mortality, the homeless, alcohol, drug abuse, Acquired Immune Deficiency Syndrome (AIDS), and the availability and cost containment of services,” 10 DCMR § 1002.2 (a), and the policy setting the goal to “[m]aintain and improve services for all children and adults in twenty-four hour (24 hr.) care facilities and ensure that victims of homelessness are cared for, especially when extreme weather conditions occur.” 10 DCMR § 1002.2 (b).

The report further stated that the amendments advance a major policy of the Housing Element of the Comprehensive Plan that, “[t]he District should continue to intensify its efforts to identify and address issues applicable to the elderly population, including institutional housing and community-based residential facilities.” 10 DCMR § 300.6.

Public Roundtable

The Commission held a public roundtable on September 23, 2004, to hear the public’s views on allowing emergency shelters and adult rehabilitation homes in C-M Districts. At the roundtable, non-profit and for-profit service providers, government agency representatives, ANC representatives, and members of the general public testified. Most of the testimony presented dealt with adult rehabilitation homes. Testimony relating to emergency shelters addressed the challenges associated with the economic infeasibility of smaller facilities and expressed community opposition to the expansion of such shelters to the C-M Districts.

Set Down Proceeding

OP initiated this rulemaking by filing a report. The Commission set down the case for a public hearing at its March 14, 2006 public meeting, and in doing so indicated that it had several concerns that it wanted addressed at the hearing, namely, the propriety of locating shelters near noxious uses, whether allowing large shelters would result in the “warehousing” of residents, whether there was an unequal distribution of shelters around the District, and expressed further concerns about the accessibility and security of the shelters.

Public Hearing

The Commission held a public hearing on October 26, 2006

OP testified in favor of the proposed amendments, explaining that allowing emergency shelters in C-M Districts would expand the potential locations available for use as emergency shelters, lower the potential cost of property acquisition, and make available sites that could accommodate larger shelters. OP also addressed the concerns raised by the Commission in its report dated

October 16, 2006. In response to the Commission's concern regarding proximity of shelters to noxious uses, OP noted that the advertised text would not permit shelters within 1,000 feet of a square containing a wastewater treatment facility or a solid waste handling facility. The report also explained that since shelters in C-M-1 and C-M-2 zones would only be allowed if approved as a special exception, the BZA would evaluate the propriety of each location. In response to the Commission's concern about the number of residents allowed in a shelter (up to 150 persons per shelter), OP explained that shelters with up to 150 persons was manageable and not uncommon, and that larger shelters allow more efficient delivery of social services to the residents. OP also responded to the Commission's concerns about accessibility and security of the shelters in the report.

The Office of Property Management also testified in favor of the amendments, testifying that a critical mass of people is needed to support the full range of services it aimed to provide at the shelters, and that limiting the number of persons in a shelter could diminish the quality of services.

In response to this testimony, the Commission requested that OP make a recommendation as to whether a limit should be placed on the number of facilities within a square, and/or whether the regulations should place a cap on the maximum number of persons allowed in a shelter housing more than 150 persons (with BZA approval)

Proposed Action

Prior to taking proposed action to approve the text amendments, the Commission noted the receipt of additional submissions from the Office of Property Management and the Department of Human Services, and a supplemental report from OP dated February 2, 2007, responding to its request for further recommendations.

OP's supplemental report recommended revising the text to allow a maximum of two shelters in a square or within 1,000 feet of each other, and between 151 and 300 persons per facility with a maximum of 450 persons for all facilities within a square, and to exempt an existing emergency shelter located at 2210 Adams Place, N.E. from these limitations.

The Office of Property Management and Department of Human Services submission stated it needed the flexibility recommended by OP in order to meet the unpredictable and increasing service demand for emergency shelters.

The Commission took proposed action to adopt OP's recommended text revisions at a properly noticed special public meeting held on February 12, 2007. When the Commission took proposed action, it expressed further concerns about the facility located at 2210 Adams Place, N.E.

The Notice of Proposed Rulemaking was published in the *D C Register* on March 16, 2007 at 54 DCR 2378, for a 30-day notice and comment period.

The proposed rulemaking was referred to the National Capital Planning Commission ("NCPC") under the terms of § 492 of the District of Columbia Charter. No response was received as of the date upon which the Commission took final action to approve this application, which occurred after the 30 day period for NCPC comment expired.

A letter dated April 13, 2007, was submitted by the Washington Legal Clinic for the Homeless, Inc., in which they stated their opposition to the proposed text amendments.

On November 30, 2007, OP submitted a final supplemental report addressing the Commission's concerns about the shelter located at 2210 Adams Place, N.E., and requesting the Commission adopt revised language that in the opinion of OP better reflected the Commission's intent when it took proposed action than was published in the proposed rulemaking notice. Specifically, OP recommended four changes to the text so that:

- The existing shelter at 2210 Adams Place, N.E. would not be required to obtain a special exception, but could operate as a matter-of-right provided that it receives a certificate of occupancy within a year after the effective date of this amendment. The shelter was opened at a time that its use was not permitted and, therefore, no certificate of occupancy was issued.
- There would not be a restriction on the distance between an emergency shelter and a "documented contaminated site" OP was concerned that the quoted term did not exist in either the D.C. or U.S. Code.
- An emergency shelter could not be located within 1,000 feet of a "solid-waste handling facility" as had been originally advertised
- Emergency shelters would not be permitted in M Districts

Final Action

At its properly noticed December 10, 2007 public meeting, the Commission took final action to approve the text amendments recommended by OP in its November 30, 2007 report. The Commission found that the changes in the text did not require the republication of a notice of proposed rulemaking because the final rules are similar enough to those published in the original notice of proposed rulemaking that all interested parties were assured an opportunity to protect their interests by contributing to the administrative process.

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and the Zoning Act

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to Chapter 8 of the Zoning Regulations, Title 11 DCMR:

Chapter 8, INDUSTRIAL DISTRICTS, is amended as follows

1. By adding a new § 801.11 to read as follows.

801.11 The emergency shelter located at 2210 Adams Place, N.E. (Square 4259, Parcel 54/81) shall be permitted as a matter of right in the C-M District; provided that a Certificate of Occupancy as an emergency shelter is obtained within one year of the effective date of this amendment.

2. By amending § 802.1 to read as follows (new text is shown in **bold and underline**):

802.1 The uses in this section shall be permitted as special exceptions in a C-M District if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section **except that emergency shelters shall not be permitted in a C-M-3 District.**

3. By adding a new § 802.28 to read as follows

802.28 An emergency shelter for five (5) to one hundred and fifty (150) persons not including resident supervisors or staff and their families, shall be permitted in a C-M-1 and C-M-2 Districts only, if the following requirements are met:

- (a) There shall be no other property containing an emergency shelter for five (5) or more persons in the same square;
- (b) There shall be no other property containing an emergency shelter for five (5) or more persons within a radius of one thousand (1,000) feet from any portion of the property;
- (c) Emergency shelters shall not be located within one thousand (1,000) feet of a square containing a sewerage treatment plant, a wastewater treatment facility, or a solid waste handling facility,
- (d) There shall be adequate, appropriately located, and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility;
- (e) The shelter shall not have any adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area;
- (f) Notwithstanding § 802.28 (b) the Board may approve up to one additional emergency shelter to be located in the same square as an

existing emergency shelter for five (5) or more persons only if the Board finds that the cumulative effect of the two facilities will not have an adverse impact on the neighborhood because of traffic, noise, or operations;

- (g) The Board may approve a facility for between one hundred and fifty-one (151) and three hundred (300) persons, not including resident supervisors_or staff and their families, only if the Board finds that the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the subject location and there is no other reasonable alternative to meet the program needs of that area of the District provided that no shelter shall be approved that would increase the total number of emergency shelter residents housed within the square to exceed four hundred and fifty (450) persons; and

- (h) The Board shall submit the application to the D.C. Office of Planning for coordination, review, report, and impact assessment, along with reports in writing of all relevant District departments and agencies, including but not limited to the Departments of Transportation and Human Services and, if a historic district or historic landmark is involved, the State Historic Preservation Officer.

4. By amending § 821.3 to read as follows (new text is shown in **bold underline**):

821.3 Any other lawful use not regulated by §§ 822 or 823 shall be permitted, subject to the standards of external effects in § 825, **except emergency shelters.**

Vote of the Zoning Commission taken at its public meeting on February 12, 2007 to **APPROVE** the proposed rulemaking by a vote of **4-0-1** (Anthony J. Hood, Gregory N. Jeffries, Michael G. Turnbull, and John G. Parsons to approve; Carol J. Mitten, having not participated, not voting)

Vote of the Zoning Commission taken at its public meeting on December 10, 2007 to **ADOPT** the final rulemaking by a vote of **4-0-1** (Anthony J. Hood, Gregory N. Jeffries, Michael G. Turnbull, and John G. Parsons to adopt; Carol J. Mitten, having not participated, not voting).

Z.C. NOTICE OF FINAL RULEMAKING & ORDER NO. 05-05

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In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in *the D C Register*; that is, on **FEB 22 2008**.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

and

Z.C. ORDER NO. 05-05

Z.C. Case No. 05-05

(Text Amendment - 11 DCMR)

(Emergency Shelters in the C-M-1 and C-M-2 (Commercial-Light Industrial) Districts)

December 10, 2007

The full text of this Zoning Commission Order is published in the "Final Rulemaking" section of this edition of the *D C Register*