

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MEMORANDUM

To: Arnold R. Finlayson, Administrator
Office of Documents and Administrative Issuance

From: Sharon S. Schellin 
Secretary to the Zoning Commission

Date: July 26, 2006

Re: Publication for the Office of Zoning

Please publish the following in the *D C Register* on August 4, 2006:

- 1 Z C Notice of Final Rulemaking & Order No. 05-21 (Case No. 05-21)

The rulemaking is also included on the attached disk in MS Word format.

Attachments

Office of
Documents and
Administrative
Issuance
2006 JUL 26 PM 5:07

ZONING COMMISSION
District of Columbia

CASE NO. 05-21
EXHIBIT NO. 22

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 (Text Amendments – 11 DCMR Animal Boarding)

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed. Title 11 (Zoning), § 199 (Definitions), § 721 (Uses as a Matter of Right (C-2)), § 802 (Special Exceptions (C-M)), § 822 (Special Exceptions (M)), § 3104 (Special Exceptions), and by adding new § 735 (Animal Boarding) and new § 736 (Animal Boarding: External Yards).

FINAL RULES ONLY Give the D C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules 53 DCR 2678 DATE April 7, 2006

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 JUNE 13, 2006

SIGNED

Alan Byrte

PHONE (202) 442-9777

☒ FINAL

☐ CONDITIONAL

NAME: ROBERT J SPAGNOLETTI TITLE 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

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

APPROVAL
OF ATTEST

Sharon J. Schellin

~~Acting~~ Secretary to the Zoning

TITLE Commission

PHONE (202) 727-0340

DATE OF
APPROVAL
OF VOTE

6/12/06

Office of Documents
use only.

THIS NOTICE
PUBLISHED AT

VOL

DCR

DATE

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

and

Z.C. ORDER NO. 05-21

Z.C. Case No. 05-21

(Text Amendments – 11 DCMR)

(Animal Boarding – Text Amendment)

June 12, 2006

The Zoning Commission for the District of Columbia, 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 as required by § 3 of the Act (D C. Official Code § 6-641 03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to 11 DCMR §§ 3025.3 and 3028 1, hereby gives notice of adoption of the following amendments to § 199 (Definitions), § 721 (Uses as a Matter of Right (C-2)), § 802 (Special Exceptions (C-M)), § 822 (Special Exceptions (M)), § 3104 (Special Exceptions), and by adding new § 735 (Animal Boarding) and new § 736 (Animal Boarding: External Yards)

A Notice of Proposed Rulemaking was published in the *D C Register* on April 7, 2006, at 53 DCR 2678

The Commission took final action to adopt the amendments at a public meeting held on June 12, 2006

This final rulemaking is effective upon publication in the *D C Register*.

Set Down Proceeding

The Commission initiated this rulemaking in response to a petition from the Office of Planning, which requested that the Commission create a definition for animal boarding and to permit the use only as a special exception subject to specific requirements within specified zone districts

The Commission set down the requested text amendments for a public hearing at its meeting of July 5, 2005.

Existing Regulations

Animal boarding facilities are not currently permitted in any zone district, either as a matter of right or by special exception. The Department of Consumer and Regulatory Affairs (DCRA) had determined on July 23, 2003 that "24-hour dog boarding and grooming with accessory retail sale of pet supplies" was similar to a veterinary hospital, because dogs stay overnight at both uses, and was therefore permitted within the C-3-A Zone District. On July 6, 2004, the Board of Zoning Adjustment concluded that the Acting Zoning Administrator erred in determining that dog boarding is permitted as a matter of right within the C-3-A Zone District and granted Appeal No. 17092, because the external effects of a dog boarding facility are more intense than those of a veterinary clinic or a pet shop, both of which are permitted within the C-3-A Zone District. Specifically, the Board noted noise, odor, and animal waste created the more intense external effects.

Description of Text Amendment

This text amendment permits animal boarding facilities as a special exception use within the C-2, C-3, C-4 Zone Districts, subject to the following requirements:

1. The animal boarding use shall not abut a Residence District.
2. The animal boarding use shall take place entirely within an enclosed and soundproof building in such a way so as to produce no noise or odor objectionable to nearby properties. The windows and doors of the premises shall be kept closed and no animals shall be permitted in an external yard on the premises.
3. The animal boarding use shall place all animal waste in closed waste disposal containers and shall utilize a qualified waste disposal company to collect and dispose of all animal waste at least weekly. Odors shall be controlled by means of an air filtration system (for example, High Efficiency Particulate Air "HEPA" filtration) or an equivalently effective odor control system.
4. The Board may impose additional requirements pertaining to the location of buildings or other structures, entrances and exits, buffers, barriers, and fencing; soundproofing; odor control, waste storage and removal (including frequency), the species and/or number, and/or breeds of animals; or other requirements, as the Board deems necessary to protect adjacent or nearby property.

This text amendment also permits animal boarding facilities as a special exception use within all C-M and M Zone Districts, subject to the following requirements:

1. An animal boarding use may be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this section.
2. The animal boarding use shall be located and designed to create no condition objectionable to adjacent properties resulting from animal noise, odor, or waste.

3. The animal boarding use shall not abut a Residence District
4. External yards or other exterior facilities for the keeping of animals shall not be permitted

Relationship to the Comprehensive Plan

The proposed text amendments will implement many of the Comprehensive Plan themes, goals, objectives, and policies, including §§ 102 and 1301, improving neighborhoods, §§ 200 and 1301, economic development, and § 1211, environmental protection

The Comprehensive Plan, under § 102.2, recommends controlling the physical qualities that make neighborhoods desirable places to live in order to ensure that the character of these neighborhoods is maintained and improved. The addition of special exception requirements for animal boarding facilities will help to control the potential for adverse impacts as a result of animal boarding.

Public Hearing

The Commission held a public hearing on the proposed text amendment on November 3, 2005. The Commission discussed other animals that may be boarded and other related uses that may board animals as an accessory use, such as veterinary hospitals. The Commission requested that the Office of Planning return in December with a proposal for a text amendment to add uses related animal boarding to the Zoning Regulations, including definitions for those uses.

Residents, representatives of neighborhood associations, and owners of dog boarding establishments within the District spoke in favor of the text amendment. Concern was raised regarding dog grooming establishments boarding dogs as an accessory use, but without the need for a special exception.

Proposed Action

At the February 13, 2006 meeting, the Commission took proposed action pursuant to 11 DCMR § 3027.2 to approve the advertised text, with the modifications discussed below. A Notice of Proposed Rulemaking was published in the *D.C. Register* on April 7, 2006, at 53 DCR 2678, for a 30-day notice and comment period.

When it took proposed action, the Commission elected to use the phrase “animal boarding” rather than “dog boarding” so as to be more inclusive. The Commission also elected to incorporate into the special exception requirements for the C-2 through C-4 Zone Districts suggestions received on December 5, 2005 for controlling odor and waste from a group of citizens and business owners.

The proposed rulemaking was referred to the National Capital Planning Commission (NCPC) under the terms of § 492 of the District of Columbia Charter. NCPC, by report dated March 8,

2006, found that the proposed text amendments, to permit animal boarding within the C-2, C-3, C-4, C-M, and M Zone Districts subject to special exception review, would not adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

No other comments were received

Final Action

At its properly noticed June 12, 2006 public meeting, the Commission took final action to approve the proposed text amendments, but when it took final action, it decided to add text to § 822 of the Zoning Regulations to make animal boarding facilities in M Districts subject to special exception review

As it stated in its Notice of Proposed Rulemaking and in its referral to NCPC, the Zoning Commission intended to make animal boarding facilities subject to special exception approval in all Industrial Districts, including M Districts, when it took proposed action. The text below more accurately reflects the intent of the Commission when it took proposed action than the text that was published in the Notice of Proposed Rulemaking.

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 and 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 Chapters 1, 7, 8, and 31 of the Zoning Regulations

Title 11 DCMR (Zoning) is proposed to be amended as follows:

- A. Subsection 199 DEFINITIONS is amended in the proper alphabetical order by adding the following new entry:

199 1 **Animal boarding** - Any premises, other than a veterinary hospital, pet shop, or pet grooming establishment, used as a commercial establishment for the overnight boarding and/or recurring daily care of animals for a fee. Any pet grooming establishment that permits ten or more animals on the premises at a time, or that permits the overnight stay of animals, is considered an animal boarding use.

B Chapter 7, COMMERCIAL DISTRICTS, is amended as follows

1 By adding new §§ 721.7 and 721.8 to read as follows

721.7 Notwithstanding § 735, an animal boarding use in existence as of July 11, 2005, under a Certificate of Occupancy for a “Dog Care Center” or “Dog Day Care Center,” may be permitted to apply for a new Certificate of Occupancy as an animal boarding use if the use does not abut a Residence Zone, except that the continued use of an external yard shall require the approval of the Board of Zoning Adjustment as a special exception pursuant to § 736

721.8 Any internal or external expansion of an animal boarding use permitted under § 721.7 shall require the approval of the Board of Zoning Adjustment as a special exception

2 By adding new §§ 735 and 736 to read as follows

735 ANIMAL BOARDING

735.1 An animal boarding use may be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this section

735.2 The animal boarding use shall not abut a Residence Zone.

735.3 The animal boarding use shall take place entirely within an enclosed and soundproof building in such a way so as to produce no noise or odor objectionable to nearby properties. The windows and doors of the premises shall be kept closed and no animals shall be permitted in an external yard on the premises

735.4 The animal boarding use shall place all animal waste in closed waste disposal containers and shall utilize a qualified waste disposal company to collect and dispose of all animal waste at least weekly. Odors shall be controlled by means of an air filtration system (for example, High Efficiency Particulate Air “HEPA” filtration) or an equivalently effective odor control system.

735.5 The Board may impose additional requirements pertaining to the location of buildings or other structures, entrances and exits, buffers, barriers, and fencing, soundproofing, odor control, waste storage and removal (including frequency), the species and/or number and/or breeds of animals, or other requirements, as the Board deems necessary to protect adjacent or nearby property

736 ANIMAL BOARDING: EXTERNAL YARDS

- 736.1 External yards or other exterior facilities for the keeping of animals shall not be permitted
- 736.2 Notwithstanding § 736 1, an animal boarding use existing on July 11, 2005, under a Certificate of Occupancy for a “Dog Care Center” or “Dog Day Care Center,” may continue the use of an external yard for the keeping of dogs if approved by the Board of Zoning Adjustment pursuant to § 3104 and the requirements of this section.
- 736 3 The yard shall be located and designed to create no condition objectionable to adjacent properties resulting from animal noise, odor, and/or waste
- 736 4 The applicant shall demonstrate that the external yard will be fenced off for the safe confinement of the animals.
- 736.5 The applicant shall demonstrate that the external yard is located entirely on private property
- 736 6 The Board shall establish the hours in which animals may be kept in the yard, provided that, no animals shall be permitted in the yard between 8:00 p.m. and 7:00 a.m.

3 By amending § 761, C-5 (PAD) DISTRICT USES, as follows (new text shown in **bold** and underlined).

- 761 1 Any use permitted in a C-4 District under § 751 shall be permitted in the C-5 (PAD) District as a matter of right, except that **an animal boarding use shall be prohibited and** a gasoline service station shall be permitted only as an accessory use to a parking garage subject to the conditions of § 701 1(1)

C. Chapter 8, INDUSTRIAL DISTRICTS, is amended as follows by adding new §§ 802.21 through 802 24 and 822 14 through 822 17 to read as follows

- 802.21 An animal boarding use may be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this section.
- 802.22 The animal boarding use shall be located and designed to create no condition objectionable to adjacent properties resulting from animal noise, odor, or waste.

- 802.23 The animal boarding use shall not abut a Residence District.
- 802.24 External yards or other exterior facilities for the keeping of animals shall not be permitted
- ***
- 822 14 An animal boarding use may be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this section
- 822 15 The animal boarding use shall be located and designed to create no condition objectionable to adjacent properties resulting from animal noise, odor, or waste
- 822 16 The animal boarding use shall not abut a Residence District.
- 822 17 External yards or other exterior facilities for the keeping of animals shall not be permitted.

D Chapter 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, is amended by adding to the table of special exceptions in § 3104.1, in the proper alphabetical order, the following new entry

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH THE CONDITIONS ARE SPECIFIED
Animal Boarding	Any C-2, C-3, C-4, C-M or M District	§§ 721.7, 721 8, 735, 736, 802 21 and 822 14

The Zoning Commission at its public meeting held on February 1, 2006 approved the application, subject to conditions, by a vote of 4-0-1 (Carol J. Mitten, Gregory N Jeffries, Anthony J Hood, and Michael G. Turnbull to approve, John G. Parsons not participating, not voting)

The Order was adopted by the Zoning Commission at its public meeting on June 12, 2006 by a vote of 4-0-1 (Carol J. Mitten, Michael G Turnbull, Anthony J Hood, and Gregory N Jeffries to approve; John G. Parsons not participating, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D C Register*, that is on _____

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
ORDER NO. 05-21
Z.C. Case No. 05-21
(Text Amendments – 11 DCMR)
(Animal Boarding – Text Amendment)
June 12, 2006**

The full text of this Zoning Commission order is published in the “Final Rulemaking” section of this edition of the *D C Register*.