

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: December 5, 2006

Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on December 15, 2006.

1. Z.C. Notice of Public Hearing (Case No. 05-38);
2. Z.C. Notice of Public Hearing (Case No. 06-02);
3. Z.C. Notice of Public Hearing (Case No. 06-31);
4. Z.C. Notice of Public Hearing (Case No. 06-35); and
5. Z.C. Notice of Final Rulemaking & Order No. 06-18 (Case No. 06-18).

The final rulemaking is also provided on the attached diskette in MS Word format.

Attachment

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DOUGLAS S. SCHILLIN
ADMINISTRATIVE
ISSUANCES

ZONING COMMISSION
District of Columbia

CASE NO.

06-18

441 4th Street, N W , Suite 200/210-S, Washington, D.C. 20001

EXHIBIT NO. 3

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ZONING COMMISSION
District of Columbia
CASE NO.06-18
EXHIBIT NO.3

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: (202) 727-0340

TITLE AND DESCRIPTION OF RULES: Z.C. Case No. 06-18 (Text Amendment-- 11 DCMR)

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed Title 11 (Zoning) Sections 11 DCMR § 3045 1

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: 53 DCR 5282 DATE: JUNE 30, 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: DECEMBER 5, 2006

SIGNED: *John B. Adams*

PHONE: (202) 442-9777

☒ FINAL ☐ CONDITIONAL

NAME: EUGENE A. ADAMS

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
OF VOTE:

9-11-06

APPROVAL
OF ATTEST:

Sharon S. 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. 06-18
Z.C. Case No. 06-18
(Text Amendment – File Retrieval Fee)
September 11, 2006

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under §§ 1 and 3 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat 797, 799 as amended, D.C. Official Code §§ 6-641.01 and 6-641.03 (2001 ed.)), and 11 DCMR § 3030 (Consent Calendar), hereby gives notice of the adoption of the following amendments to Chapter 30, § 3045 (Miscellaneous Fees) to require payment of a \$15 fee to retrieve zoning records stored at an off-site storage facility

A Notice of Proposed Rulemaking was published in the *D.C. Register* on June 30, 2006 at 53 DCR 5282. No comments were received. The Commission modified the text when it took final action. Upon advice from the Office of Attorney General, the Commission added language waiving the retrieval fee when the records are sought for a non-commercial use and the request is made by an educational or scientific institution for scholarly or scientific research or by representatives of the news media. This change was made so the regulation is consistent with the Title II of the District of Columbia Administrative Procedure Act, effective March 25, 1977, (D.C. Law 1-96, D.C. Official Code § 2-531 *et seq.* “D.C. FOIA Act”) as amended.

The Commission took final action to adopt the amendment at a public meeting held on September 11, 2006.

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

Proposed Action

The Commission initiated this rulemaking in response to a petition from the Office of Zoning requesting an amendment to § 3045 of the Zoning Regulations to require payment of a \$15 fee for retrieval of records stored at an off-site storage facility.

Because this action would merely add a fee for retrieving certain files and would not impact the zone plan as embodied in the Zoning Regulations and Zoning Map, no hearing was required by the Zoning Act.

The Commission therefore voted to approve the publication of a notice of proposed rulemaking at its meeting of April 20, 2006 without holding a public hearing or referring the proposed text to the National Capital Planning Commission.

A Notice of Proposed Rulemaking was published in the *D C Register* on June 30, 2006 at 53 DCR 5282 for a 30-day notice and comment period. No comments were received

Description of Text Amendment

The Office of Zoning makes the files of Zoning Commission and Board of Zoning Adjustment cases available to the public. Files for cases from the present to 1985 are stored by the Office of Zoning at its offices at 441 4th St , N W. Files for pre-1985 cases are stored off-site at a storage facility managed by a private company. The company charges the Office of Zoning a \$15 fee to retrieve and deliver the files to the Office of Zoning's suite at 441 4th St , N W. The purpose of the text amendment is to pass the direct cost on to the person who requests the file.

The advertised text adds a new paragraph (e) to § 3045.1 of the Zoning Regulations. The amendment adds a fee for retrieving Office of Zoning records, including Zoning Commission and Board of Zoning Adjustment files, from off-site storage facilities, in order to recover the fee that the Office of Zoning is charged for retrieving said files.

Relationship to the Comprehensive Plan

The text amendment adopted herein is consistent with the D.C. FOIA Act and therefore is not inconsistent with the *Comprehensive Plan for the National Capital*.

Final Rulemaking

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on September 11, 2006.

The Commission modified the text when it took final action. Upon advice from the Office of Attorney General, the Commission added language waiving the retrieval fee when the records are sought for a non-commercial use and the request is made by an educational or scientific institution for scholarly or scientific research or by representatives of the news media. The Commission also added language that affects the timing of the fee. The Commission made these changes to the text so the regulation is consistent with the District's Freedom of Information Act laws.

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

Based on the above, the Commission finds that the proposed amendment to the Zoning Regulations is in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the *Comprehensive Plan for the National Capital*.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendment to Title 11 DCMR, Chapter 30, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE, Section 3045, MISCELLANEOUS FEES, Subsection 3045.1, paragraph (e) is added to read as follows

- (e) The fee for retrieving Office of Zoning records located off-site shall be \$15 per record. This fee shall be waived when the records are sought for non-commercial use and the request is made by an educational or scientific institution for scholarly or scientific research or by a representative of the news media. The Office of Zoning may not require advance payment of the fee unless the requester has previously failed to pay fees in a timely fashion.

At its public meeting of April 20, 2006, the Zoning Commission **APPROVED** the proposed rulemaking by a vote of **5-0-0** (Carol J. Mitten, Michael G. Turnbull, Anthony J. Hood, Gregory N. Jeffries, and John G. Parsons to approve).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on September 11, 2006, by a vote of **5-0-0** (Carol J. Mitten, Michael G. Turnbull, Anthony J. Hood, Gregory N. Jeffries, and John G. Parsons to adopt).

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 _____

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

and

Z.C. Order No. 06-18

Z.C. Case No. 06-18

(Text Amendment – 11 DCMR)

September 11, 2006

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