

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 09-16

As Secretary to the Commission, I hereby certify that on MAR 30 2010 copies of this Z.C. Notice of Final Rulemaking & Order No. 09-16 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|--|
| 1. <i>D.C. Register</i> | 5. DDOT (Karina Ricks) |
| 2. All ANC Chairpersons – see attached list | 6. Melinda Bolling, General Counsel
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| 3. Gottlieb Simon
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(Alan Bergstein) |
| 4. All Councilmembers – see attached list | |

ATTESTED BY:


Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

ZONING COMMISSION
District of Columbia

CASE NO. 09-16
EXHIBIT NO. 16

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District of Columbia
CASE NO.09-16
EXHIBIT NO.16

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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



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

AND

Z.C. ORDER NO. 09-16

Z.C. Case No. 09-16

(Text Amendment – 11 DCMR)

**Text Amendment to Permit Car Sharing Parking Spaces as a Matter of Right Use in the R,
CR, and SP Zone Districts**

March 22, 2010

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, 798, as amended; D.C. Official Code §§ 6-641.01 and 6-641.03); hereby gives notice of adoption of the following text amendments to the Zoning Regulations of the District of Columbia, DCMR Title 11. A Notice of Proposed Rulemaking was published in the *D.C. Register* on February 12, 2010, at 57 DCR 1365. The amendments shall become effective upon the publication of this notice in the *D.C. Register*.

Description of Amendments

The text amendments establish zoning definitions for “car-sharing vehicle” and “car-sharing space” and amend the text of the Zoning Regulations to permit car sharing parking spaces as a new matter of right use in the Residential (R), Mixed Use (CR), and Special Purpose (SP) Zone Districts, subject to certain limitations.

Procedures Leading to Adoption of Amendments

The District of Columbia Office of Planning (“OP”) submitted a memorandum dated October 9, 2009 that served as a petition requesting the amendments. The Zoning Commission voted to set down the proposal for hearing at its October 19, 2010 public meeting.

The Commission is required under D.C. Official Code § 1-309.10(d) to give great weight to issues and concerns raised in the affected ANC's written recommendation. No ANC comments were received.

A public hearing was scheduled for and held on December 21, 2009. At the conclusion of the hearing, the Commission authorized the referral of the revised text recommended by OP to the National Capital Planning Commission (“NCPC”) and the publication of a notice of proposed rulemaking in the *DC Register*.

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NCPC, through a delegated action dated January 28, 2010, found that the proposed text amendments would not adversely affect the identified federal interests, nor be inconsistent with the Comprehensive Plan for the National Capital. (Exhibit No. 14.)

The Notice of Proposed Rulemaking was published in the *D.C. Register* ("DCR") on February 12, 2010, at 57 DCR 1365, for a 30-day notice and comment period.

At a properly noticed March 22, 2010 public meeting, the Commission took final action to adopt the following amendments to the Zoning Regulations (Title 11 DCMR) without making any substantive change to the proposed text.¹

1. Chapter 1, THE ZONING REGULATIONS, §199 Definitions, is amended by inserting the following new definitions in alphabetical order:

Car-sharing space – a parking space that is designated for the parking of a car-sharing vehicle.

Car-sharing vehicle – any vehicle available to multiple users who are required to join a membership organization in order to reserve and use such a vehicle for which they are charged based on actual use as determined by time and/or mileage.

2. Chapter 2, R-1 RESIDENCE DISTRICT USE REGULATIONS, is amended as follows:

- A. By amending § 201, USES AS A MATTER OF RIGHT, § 201.1, to permit up to two car-sharing spaces on an unimproved lot as a matter of right and by inserting the use in alphabetical order, so that the subsection will read as follows:

201.1 The following uses shall be permitted as a matter of right in R-1 Districts:

- (a) Car-sharing spaces on an unimproved lot, with no more than two (2) spaces permitted;
- (b) Chancery existing on September 22, 1978; provided that the following requirements shall be met:
 - (1) After February 23, 1990, the continued use of the chancery shall be limited to the government that lawfully occupied the chancery on that date;

¹ Because of the realphabetizing of § 201.1, conforming amendments were made to other provisions to reflect the correct codifications of § 201.1 uses being referred to.

- (2) No additional or accessory structure may be constructed on the lot that is occupied by the chancery;
 - (3) There shall be no expansion of the exterior walls, height, bulk, gross floor area, or any portion of any existing building or structure that is used as a chancery;
 - (4) If an existing building or structure that is used as a chancery is destroyed by fire, collapse, explosion, or act of God, the building or structure may be reconstructed;
 - (5) The reconstruction that is authorized by subparagraph (4) of this paragraph shall not be subject to the requirements of chapter 20 of this title; and
 - (6) The reconstruction that is authorized by subparagraph (4) of this paragraph shall be limited to the chancery site as it existed on February 23, 1990;
- (c) Child development center located in a District of Columbia public school or a public recreation center operated by the D.C. Department of Parks and Recreation; provided, that written permission to use the school or the recreation center shall have been granted by the Superintendent of Schools or the Director of the Department of Parks and Recreation, respectively;
- (d) Church or other place of worship, but not including rescue mission or temporary revival tents;
- (e) Community-Based Residential Facility, as limited by the following:
 - (1) Youth residential care home, community residence facility, or health care facility for not more than six (6) persons, not including resident supervisors or staff and their families; or for not more than eight (8) persons, including resident supervisors or staff and their families; provided, that the number of persons being cared for shall not exceed six (6); and
 - (2) Emergency shelter for not more than four (4) persons, not including resident supervisors or staff and their families;

- (f) Community-based residential facility for occupancy by persons with handicaps; provided, that the determination of handicapped facility shall be made according to the reasonable accommodation criteria in 14 DCMR §111, "Procedures for Reasonable Accommodation under the Fair Housing Act." For purposes of this subsection, a "handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more of such person's major life activities, or a record of having, or being regarded as having, such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance;
- (g) Embassy;
- (h) Farm or truck garden;
- (i) Fire Station;
- (j) Mass transit facility;
- (k) One-family detached dwelling;
- (l) Parsonage, vicarage, rectory, or Sunday school building;
- (m) Police Department Local Facility;
- (n) Private garage, as a principal use, designed to house no more than two (2) motor vehicles and not exceeding four hundred fifty square feet (450 ft.²) in area, subject to the special provisions of chapter 23 of this title;
- (o) Private garage on an alley lot so recorded on the records of the Surveyor, District of Columbia, or recorded on the records of the D.C. Office of Tax and Revenue, on or before November 1, 1957, subject to the special provisions of chapter 23 of this title;
- (p) Public Library;
- (q) Public recreation and community center;
- (r) Public school, subject to the provisions of chapter 21 of this title; public schools may collocate with other permitted schools or uses provided all applicable requirements of this title are met. Public

schools may share common on-site recreation space including gymnasiums, playgrounds, and fields, and these shared recreational spaces may count toward the minimum lot area provided that the school is adjacent to the shared recreation space; on-site office use must be ancillary and necessary to the operation of the particular school;

- (s) Temporary building for the construction industry that is incidental to erection of buildings or other structures permitted by this section;
- (t) Temporary use of premises by fairs, circuses, or carnivals, upon compliance with the provisions of chapter 13 of Title 19 of the DCMR (Amusements, Parks and Recreation);
- (u) Transportation right-of-way or underground conduit or pipeline;
- (v) Youth residential care home, community residence facility, or health care facility for seven (7) to eight (8) persons, not including resident supervisors or staff and their families; provided, that there shall be no property containing an existing community-based residential facility for seven (7) or more persons either in the same square, or within a radius of one thousand feet (1,000 ft.) from, any portion of the subject property; and
- (w) The following uses are permitted as a matter of right if located in a building owned by the District of Columbia that formerly served as the location of a public school:
 - (1) Administrative offices of District government agencies not part of the criminal justice system, provided:
 - (A) The use shall not extend outside the building unless accessory and incidental to the principal administrative use; and
 - (B) Any storage shall be fully enclosed;
 - (2) Clinic for humans, provided that the use shall not be a substance abuse treatment facility or a community-based residential facility;
 - (3) Community service use or uses, provided:

- (A) The application for a certificate of occupancy include evidence demonstrating that the established mission of the use will serve the community, neighborhood, or District of Columbia population;
 - (B) There is no outdoor storage of materials; and
 - (C) The use shall not be a community- based residential facility, a part of the criminal justice system, or a substance abuse treatment facility;
 - (4) Child/Elderly development center; and
 - (5) Community college, up to fifty thousand square feet (50,000 ft.²) of building area, provided:
 - (A) There shall be no external activities after 9:00 PM; and
 - (B) There shall be no use of the college space after midnight.
- B. By amending § 202, ACCESSORY USES (R-1), § 202.7, to allow up to two car sharing spaces as an accessory use in an R-1 District, so that the subsection will read as follows:

202.7 For a one family detached dwelling, in addition to any accessory parking space required by § 2101.1, either of the following is permitted:

 - (a) One (1) parking space for the exclusive use of the occupants or their guests; or
 - (b) Up to two (2) car-sharing spaces, neither of which may be a space devoted to required parking.
- C. By amending § 222, Use and Expansion of Former Public School Buildings (R-1), §§ 222.1 and 222.2, to replace the references to “§ 201.1(v)” with “§ 201.1(w)”, so that the two provisions will read as follows;

222.1 The following uses, if located in a building owned by the District of Columbia that formerly served as the location of a public school (“former

school building”), shall be permitted as a special exception in the R-1 District if approved by the Board of Zoning Adjustment under § 3104:

- (a) A District government use disallowed or not listed in § 201.1(w);
- (b) A use permitted by § 201.1(w) that does not meet one or more conditions or provisions that apply to it; and
- (c) A not-for-profit use that is not permitted as a matter-of-right pursuant to § 201.1(w)(3).

222.2 No former school building housing a use permitted by § 201.1(w) or by this section may be expanded without the approval of the Board of Zoning Adjustment under § 3104.1.

3. Chapter 3, R-2, R-3, R-4 AND R-5 RESIDENCE DISTRICT USE REGULATIONS, § 301 ACCESSORY USES AND BUILDINGS (R-2), § 301.1, is amended to allow more than two car sharing spaces as an accessory use in these zone districts, so that the subsection will read as follows:

301.1 The following accessory uses or accessory buildings incidental to the uses permitted for R-2 Districts in §§ 300 through 319 shall be permitted in R-2 Districts:

- (a) Any accessory use permitted in R-1 Districts under § 202 not regulated in this subsection;
- (b) Car-sharing spaces; provided that any car-sharing space beyond the first two (2) spaces shall be located within or under a principal structure and may not be a required parking space for any use on site; and
- (c) Other accessory uses, buildings, or structures customarily incidental to the uses permitted in R-2 Districts under this chapter.

4. Chapter 5, SPECIAL PURPOSE DISTRICTS, § 501, USES AS A MATTER OF RIGHT (SP), § 501.1, is amended to permit car-sharing spaces” as a matter of right use in an SP district and inserting that use in alphabetical order, so that the subsection will read as follows:

501.1 The following uses shall be permitted as a matter of right in an SP District:

- (a) Any use permitted in any R-5 District under §§ 350.4 and 350.5, except a hotel;

- (b) Antenna, subject to the standards and procedure which apply pursuant chapter 27 of this title;
- (c) Art gallery;
- (d) Car-sharing spaces, none of which may be a required parking space for any use on site;
- (e) Child/Elderly development center; or adult day treatment facility;
- (f) Community center building;
- (g) Driver's License Road Test Facility;
- (h) Park, playground, swimming pool, or athletic field operated by a local community organization;
- (i) Police Department General Facility, except as provided in § 504;
- (j) Private school, including kindergarten, elementary, secondary, trade, or any other school;
- (k) Public School, subject to the provisions of chapter 21 of this title;
- (l) Religious reading room; and
- (m) Ticket office.

5. Chapter 6, MIXED USE (COMMERCIAL RESIDENTIAL) DISTRICTS, is amended as follows:

- A. Section 601, USES AS A MATTER OF RIGHT (CR), § 601.1, is amended to permit car-sharing spaces” as a matter of right use in a CR district and inserting that use in alphabetical order, so that the subsection will read as follows::**

601.1 The following uses shall be permitted as a matter of right in a CR District:

- (a) Antenna, subject to the standards and procedures which apply to the particular class of antenna pursuant to chapter 27 of this title;
- (b) Artist's studio;

- (c) Boat club or marina;
- (d) Car-sharing spaces, none of which may be a required parking space for any use on site;
- (e) Church or other place of worship;
- (f) Community center;
- (g) Driver's License Road Test Facility;
- (h) Electronic Equipment Facility (EEF) use under either or both of the following circumstances:
 - (1) The EEF use occupies no more than twenty-five percent (25%) of the above ground constructed gross floor area of the building, provided that no EEF use is located on the ground floor; or
 - (2) The EEF use is located below ground floor;
- (i) Embassy, chancery, or international organization;
- (j) Fire Department Administrative Facility;
- (k) Fire Department Support Facility;
- (l) Fire Station;
- (m) Hotel or inn;
- (n) Library (other than public library);
- (o) Museum;
- (p) Office;
- (q) One-Family dwelling, flat, or multiple dwelling;
- (r) Park or open space;
- (s) Private club, restaurant, prepared food shop fast food establishment, or food delivery service; provided, that a fast food

establishment or food delivery service shall not include a drive-through;

- (t) Private or public theater;
- (u) Private school or trade school;
- (v) Police Department General Facility, except as provided in § 607;
- (w) Police Department Local Facility;
- (x) Public library;
- (y) Public recreation and community center;
- (z) Public School, subject to the provisions of chapter 21 of this title;
- (aa) Recreational building or use;
- (bb) Retail sales or services not specified in §§ 602, 606, and 608 through 618;
- (cc) Rooming or boarding house;
- (dd) Swimming pool; and
- (ee) Notwithstanding § 602.1, temporary surface parking lot accessory to the Ballpark shall be permitted on Squares 603, 605, 657, 660, 661, 662, 662E, 664, 665, 700, 701, 882; and on Square 658, Lot 7; Square 767, Lots 44-47; Square 768, Lots 19-22; and Square 769, Lot 19 and those portions of Lots 18 and 20 within the CR District; in accordance with § 2110. In the event that the cumulative parking limit established in § 2110.1 (a) is met, additional temporary surface parking spaces accessory to the Ballpark on Squares 603, 605, 657, 658, 660, 661, 662, 662E, 664, 665, 700, 701, 882; and on Square 767, Lots 44-47; Square 768, Lots 19-22; and Square 658, Lot 7; Square 769, Lot 19 and those portions of Lots 18 and 20 within the CR District, shall be permitted as a special exception if approved by the Board of Zoning Adjustment pursuant to § 2110.2.

- B. Section 602, PROHIBITED USES (CR), § 602.1 (o), is amended to replace the reference to “601.1 (dd)” with “601.1 (ee)”, so that the section reads as follows:

602.1 The following uses shall be specifically prohibited in CR Districts:

- (a) Any establishment that has as a principal use the administration of massages**
- (b) Any industrial use prohibited in an M District;**
- (c) Any use first permitted in the M District;**
- (d) Car wash, as a principal use;**
- (e) Carting, express, moving, or hauling terminal or yard, except a cooperative central delivery or pick-up system for goods or merchandise solely to serve businesses in the area;**
- (f) Chemical manufacturing, storage, or distribution;**
- (g) Drive-through establishment (any establishment where goods or services are rendered directly to occupants of motor vehicles while in the vehicles);**
- (h) Enameling, plating, or painting (except artist's studio), as a principal use;**
- (i) Firearms retail sales establishments as a principal or an accessory use;**
- (j) Gasoline service station;**
- (k) Material salvage;**
- (l) Outdoor advertising or billboard as a principal use;**
- (m) Outdoor material storage;**
- (n) Packing or crating operations as a principal use;**
- (o) Parking lot, except a temporary surface parking lot permitted pursuant to § 601.1(ee);**
- (p) Sexually-oriented business establishment;**

(q) Smelting or rendering; and

(r) Veterinary hospital.

6. Chapter 21, OFF-STREET PARKING REQUIREMENTS is amended as follows:

- A. By amending the schedule of parking spaces appended to § 2101.1 as applicable to Uses in former public school buildings to change the reference to § 201 (v) to § 201 (w), so that the applicable schedule will read as follows:

<u>Uses in former public school buildings authorized by 11 DCMR §§ 201.1 (w) or 222</u>	
R Districts	Parking requirements will be those that apply in the most restrictive zone district in which the use is otherwise first permitted as a matter of right.

- B. Subsection 2116.1 is amended as follows:

- (1) By adding references to the new §§ 201.1(a), 501.1(d), and 601.1(d) added through these text amendments, so that the subsection will read as follows:

2116.1 Except as provided in §§ 201.1(a), 214, 501.1(d), 510, 601.1(d), 708, 730, 743.2(d), 753.1(c), 761.2, 803.1, 926, 2116.5, 2116.10, and 2117.9(c), all parking spaces shall be located on the same lot with the buildings or structures they are intended to serve.

- (2) By amending the introductory clause of § 2116.2 to insert the phrase “including car-sharing spaces” so that the subsection will read as follows:

2116.2 Parking spaces, including car-sharing spaces, shall be located in one (1) of the following ways:

(a) Within a permitted garage or carport, subject to the special provisions of Chapter 23; or

(b) On an open area of the lot as follows:

(1) Within a rear yard;

(2) Within a side yard; or

- (3) Except in an SP District, elsewhere on the lot if accessory to a commercial or industrial use.

- 7. Chapter 28, HILL EAST DISTRICT (HE), § 2802, USES AS A MATTER OF RIGHT, § 2802.2 (g), is amended to replace the reference to “§§ 201.1 (o) and 330.5 (i)” with “§§ 201.1 (f) and 330.5 (d)”, so that the section will read as follows:

2802.2 The following uses shall be permitted as a matter of right in the HE District, provided that no use may be located on a site that has not been designated for that use by the Master Plan:

- (a) Adult day treatment facility;
- (b) Antenna, subject to the standards and procedures that apply to the particular class of antenna pursuant to Chapter 27 of this Title;
- (c) Child/Elderly development center;
- (d) Church or other place of worship;
- (e) Clinic;
- (f) Community-based residential facility not described in subparagraph (g), subject to the following limitations:
 - (1) Youth residential care home, community residence facility, or health care facility for not more than six (6) persons, not including resident supervisors or staff and their families.
 - (2) Youth residential care home or community residence facility for seven (7) to fifteen (15) persons, not including resident supervisors or staff and their families; provided that there shall be no property containing an existing community-based residential facility for seven (7) or more persons either in the same Square or within a radius of five hundred feet (500 ft.) from any portion of the subject property; and
 - (3) Emergency shelter for not more than four (4) persons, not including resident supervisors or staff and their families.

- (g) Community-based residential facility to be occupied persons with a handicap plus resident supervisors, as permitted by right in residence and commercial districts pursuant to 11 DCMR §§ 201.1 (f) and 330.5 (d);
- (h) Fire Station;
- (i) Government offices and facilities;
- (j) Hotel or inn;
- (k) Library, public or private;
- (l) Museum;
- (m) Office;
- (n) Park or open space;
- (o) Police Department Local Facility;
- (p) Private club, restaurant, fast food restaurant, or food delivery service; provided, a fast food restaurant or food delivery service shall not include a drive-through;
- (q) Public recreation and community center;
- (r) Public school;
- (s) Residential dwellings, including row dwellings, flats, and multiple dwellings; and
- (t) Retail sales and services involving the sale, lease, or servicing of new or used products to the general public, or which provide personal services or entertainment, or provide product repair or services for consumer and business goods.

8. Chapter 32, ADMINISTRATION AND ENFORCEMENT, § 3203, Certificates of Occupancy, § 3203.1 (b), is amended to replace the reference to “§§ 201.1 (o) and 330.5 (i)” with “§§ 201.1 (f) and 330.5 (d)”, so that the section will read as follows:

3203.1 Except as provided in §§ 3203.7, 3203.8, 3203.9, or the second sentence of this subsection, no person shall use any structure, land, or part of any structure or land for any purpose until a certificate of occupancy has been issued to that person

stating that the use complies with the provisions of this title and the D.C. Construction Code, Title 12 DCMR. The requirements of this subsection shall not apply to:

- (a) A one-family dwelling; or
- (b) A community based residential facility to be occupied by six (6) or fewer persons with a handicap plus resident supervisors, as permitted by right in residence and commercial districts pursuant 11 DCMR §§ 201.1(f) and 330.5(d).

On December 21, 2009, upon motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **took** action to **APPROVE** the case at the conclusion of the hearing by a vote of **3-0-2** (Anthony J. Hood, William W. Keating, III, and Michael G. Turnbull to approve; Konrad W. Schlater and Peter G. May, not present, not voting).

On March 22, 2010, upon motion of Chairman Hood, as seconded by Vice-Chairman Keating, the Zoning Commission **ADOPTED** this rulemaking at its public meeting by a vote of **3-0-2** (Anthony J. Hood, William W. Keating, III, and Michael G. Turnbull to adopt; Konrad W. Schlater and Peter G. May, not having participated, not voting).

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 April 2, 2010.



ANTHONY J. HOOD
Chairman
Zoning Commission



JAMISON L. WEINBAUM
Director
Office of Zoning

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

AND

Z.C. ORDER NO. 09-16

Z.C. Case No. 09-16

(Text Amendment – 11 DCMR)

**Text Amendment to Permit Car Sharing Parking Spaces as a Matter of Right Use in the R,
CR, and SP Zone Districts**

March 22, 2010

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