

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



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 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 DEC 15 2006.



CAROL J. MITTEN
Chairman
Zoning Commission



JERRILY R. KRESS, FAIA
Director
Office of Zoning

**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*.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 06-18

As Secretary to the Commission, I hereby certify that on **DEC 14 2006** copies of this Z.C. Notice of Final Rulemaking & Order No. 06-18 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. All ANC Chairs (see attached list)
3. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
4. All Councilmembers (see attached list)
5. Office of Planning (Ellen McCarthy)
6. DDOT (Ken Laden)
7. Zoning Administrator (Bill Crews)
8. Jill Stern, Esq.
General Counsel
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002
9. Office of the Attorney General
(Alan Bergstein)

ATTESTED BY:

A handwritten signature in cursive script that reads "Sharon S. Schellin".

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