

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA NOTICE OF EMERGENCY RULEMAKING

and

ZONING COMMISSION ORDER NO. 929-B

Case No. 00-28TA

(Text Amendment -- Electronic Equipment Facilities -- 11 DCMR)

June 4, 2001

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in sections 1 and 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Code §§ 5-413 & 5-424), and section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Code § 1-1506(c)), hereby gives notice of the re-adoption, on an emergency basis, of amendments to chapters 1, 6, 7, 8, 21, 22, 30 and 31 of the Zoning Regulations (11 DCMR).

This emergency rulemaking is identical to the emergency rulemaking adopted on February 12, 2001, and published in the February 23, 2001, edition of the D.C. Register (48 DCR 1843), and nearly identical to the emergency rulemaking published in the December 8, 2000, edition of the D.C. Register (47 DCR 9775).

Re-adoption of the rule on an emergency basis is necessary because the emergency conditions identified in the February 23, 2001, notice and the December 8, 2000, notice continue to exist, but the Zoning Commission's consideration of a permanent rule is not yet completed.

The initial emergency rules were adopted in response to: 1) the extreme speed with which EEFs are being developed; 2) the unique and potentially adverse land use implications of EEFs; 3) the concentration of EEFs in the area north of Massachusetts Avenue identified for redevelopment; 4) the contradiction of this land use with the redevelopment objectives for the area; and 5) the need to protect the investments already made by the city, private firms and federal authorities in redeveloping the same area, which include a new Metrorail Station, the new headquarters for the Bureau of Alcohol, Tobacco and Firearms, and the location of new private businesses.

The complexity of the issues presented prevents the Commission from taking final rulemaking action prior to the expiration of the emergency rule. The District Charter requires that the Zoning Commission hold public hearing(s) before adopting any change to the Zoning Regulations. On May 7, 2001, the Commission held a public hearing on a proposed final version of these rules and intends to consider whether to take proposed action at its June 11, 2001, meeting. The above circumstances justify re-adopting these rules on an emergency basis.

This emergency rule will expire on October 9, 2001 (the 120th day after the adoption of this rule), or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

Title 11 DCMR (Zoning Regulations) is amended as follows:

- A. Amend Chapter 1, Section 199, DEFINITIONS, § 199.1, by adding the term Electronic Equipment Facility to the list of definitions:

Electronic Equipment Facility (EEF) - a facility that is primarily occupied or intended to be occupied by electronic and computer equipment that provides electronic data switching, transmission, or telecommunication functions between computers, both inside and outside the facility. Ancillary uses may include an office for equipment personnel, back-up power generators, and fuel storage.

- B. Amend Chapter 6, § 602, PROHIBITED USES (CR), by adding a new Paragraph (r) to § 602.1 to read as follows:

(r) Electronic Equipment Facility.

- C. Amend Chapter 7, COMMERCIAL DISTRICTS, as follows:

1. Amend § 741 to add new §§ 741.8 and 741.9 to read as follows:

741.8 An Electronic Equipment Facility shall be permitted as a matter of right provided that the facility is located completely below the ground floor level or, if not so located, occupies no more than twenty percent (20%) of the FAR of the building in which it is located.

741.9 An EEF permitted as a matter of right pursuant to § 741.8 shall not occupy any portion of the ground floor level of the building in which it is located.

2. Add a new section 745 to read as follows:

745 ELECTRONIC EQUIPMENT FACILITY (C-3)

745.1 An Electronic Equipment Facility (EEF) that does not qualify as a matter of right use under § 741.8 may be permitted as a special exception if approved by the Zoning Commission.

745.2 An applicant seeking a special exception for an EEF shall demonstrate, in addition to the other elements required for obtaining a special exception, that the proposed use will not, as a consequence of its design, operation, low employee presence, or proximity to other EEFs, preclude future revitalization of the neighborhood, reduce the potential for vibrant streetscapes, deplete street life, or inhibit pedestrian or vehicular movement.

745.3 In evaluating whether an EEF will have any of the adverse impacts described in § 745.2, the Commission shall consider, in addition to other relevant factors, the adverse impact of:

- (a) The absence of retail uses or of a design capable of accommodating retail uses in the future;
- (b) The presence of security or other elements in the design that could impair street life and pedestrian flow;
- (c) The disruption of existing or the elimination of officially proposed pedestrian or vehicular routes; and
- (d) The inability of the EEF to be adapted in the future for permitted uses.

745.4 The Commission in weighing the potentially adverse factors delineated in § 745.3 (a) through (d) shall consider the economic development potential of the area in which the EEF is proposed to be established and shall give greater negative weight to these factors if the EEF is to be located in proximity to an existing or proposed Metro Station or on a pedestrian corridor.

745.5 The Commission may give positive weight to any economic benefits that the proposed EEF will have on adjacent properties, including the potential for increased businesses activity within the neighborhood, if that activity will foster economic development.

745.6 The Zoning Commission may impose requirements pertaining to design, appearance, landscaping, parking, and other such requirements as it deems necessary to protect adjacent property and to achieve an active, safe and vibrant street life.

3. Add a new Section 756 to read as follows:

756 ELECTRONIC EQUIPMENT FACILITY (C-4)

756.1 An Electronic Equipment Facility (EEF) that does not qualify as a matter of right use under § 741.8 may be permitted as a special exception if approved by the Zoning Commission.

756.2 An applicant seeking a special exception for an EEF shall demonstrate, in addition to the other elements required for obtaining a special exception, that the proposed use will not, as a consequence of its design, operation, low employee presence, or proximity to other EEFs, preclude future revitalization of the neighborhood, reduce the potential for vibrant streetscapes, deplete street life, or inhibit pedestrian or vehicular movement.

756.3 In evaluating whether an EEF will have any of the adverse impacts described in § 756.2, the Commission shall consider, in addition to other relevant factors, the adverse impact of:

- (a) The absence of retail uses or of a design capable of accommodating retail uses in the future;
- (b) The presence of security or other elements in the design that could impair street life and pedestrian flow;
- (c) The disruption of existing or the elimination of officially proposed pedestrian or vehicular routes; and
- (d) The inability of the EEF to be adapted in the future for permitted uses.

756.4 The Commission in weighing the potentially adverse factors delineated in § 756.3 (a) through (d) shall consider the economic development potential of the area in which the EEF is proposed to be established and shall give greater negative weight to these factors if the EEF is to be located in proximity to an existing or proposed Metro Station or on a pedestrian corridor.

756.5 The Commission may give positive weight to any economic benefits that the proposed EEF will have on adjacent properties, including the potential for increased businesses activity within the neighborhood, if that activity will foster economic development.

756.6 The Zoning Commission may impose requirements pertaining to design, appearance, landscaping, parking, and other such requirements as it deems necessary to protect adjacent property and to achieve an active, safe and vibrant street life.

D. Amend Chapter 8, INDUSTRIAL DISTRICTS, as follows:

1. By adding a new section 802A to read as follows:

802A ELECTRONIC EQUIPMENT FACILITY (CM)

802A.1 An Electronic Equipment Facility (EEF) that does not qualify as a matter of right use under § 741.8 may be permitted as a special exception if approved by the Zoning Commission.

802A.2 An applicant seeking a special exception for an EEF shall demonstrate, in addition to the other elements required for obtaining a special exception, that the proposed use will not, as a consequence of its design, operation, low employee presence, or proximity to other EEFs, preclude future revitalization of the

neighborhood, reduce the potential for vibrant streetscapes, deplete street life, or inhibit pedestrian or vehicular movement.

802A.3 In evaluating whether an EEF will have any of the adverse impacts described in § 802A.2, the Commission shall consider, in addition to other relevant factors, the adverse impact of:

- (a) The absence of retail uses or of a design capable of accommodating retail uses in the future;
- (b) The presence of security or other elements in the design that could impair street life and pedestrian flow;
- (c) The disruption of existing or the elimination of officially proposed pedestrian or vehicular routes; and
- (d) The inability of the EEF to be adapted in the future for permitted uses.

802A.4 The Commission in weighing the potentially adverse factors delineated in § 802A.3 (a) through (d) shall consider the economic development potential of the area in which the EEF is proposed to be established and shall give greater negative weight to these factors if the EEF is to be located in proximity to an existing or proposed Metro Station or on a pedestrian corridor.

802A.5 The Commission may give positive weight to any economic benefits that the proposed EEF will have on adjacent properties, including the potential for increased businesses activity within the neighborhood, if that activity will foster economic development.

802A.6 The Zoning Commission may impose requirements pertaining to design, appearance, landscaping, parking and other such requirements as it deems necessary to protect adjacent property and to achieve an active, safe and vibrant street life.

2. By adding a new section 822A to read as follows:

822A ELECTRONIC EQUIPMENT FACILITY (M)

822A.1 An Electronic Equipment Facility (EEF) that does not qualify as a matter of right use under section § 741.8 may be permitted as a special exception if approved by the Zoning Commission.

822A.2 An applicant seeking a special exception for an EEF shall demonstrate, in addition to the other elements required for obtaining a special exception, that the proposed use will not, as a consequence of its design, operation, low employee presence, or proximity to other EEFs, preclude future revitalization of the

neighborhood, reduce the potential for vibrant streetscapes, deplete street life, or inhibit pedestrian or vehicular movement.

822A.3 In evaluating whether an EEF will have any of the adverse impacts described in § 822A.2, the Commission shall consider, in addition to other relevant factors, the adverse impact of:

- (a) The absence of retail uses or of a design capable of accommodating retail uses in the future;
- (b) The presence of security or other elements in the design that could impair street life and pedestrian flow;
- (c) The disruption of existing or the elimination of officially proposed pedestrian or vehicular routes; and
- (d) The inability of the EEF to be adapted in the future for permitted uses.

822A.4 The Commission in weighing the potentially adverse factors delineated in § 822A.3 (a) through (d) shall consider the economic development potential of the area in which the EEF is proposed to be established and shall give greater negative weight to these factors if the EEF is to be located in proximity to an existing or proposed Metro Station or on a pedestrian corridor.

822A.5 The Commission may give positive weight to any economic benefits that the proposed EEF will have on adjacent properties, including the potential for increased businesses activity within the neighborhood, if that activity will foster economic development.

822A.6 The Zoning Commission may impose requirements pertaining to design, appearance, landscaping, parking and other such requirements as it deems necessary to protect adjacent property and to achieve an active, safe, and vibrant street life.

E. Amend Chapter 21, OFF-STREET PARKING REQUIREMENTS, as follows:

1. By amending section 2101.1 to add the following parking standards for Electronic Equipment Facility:

Electronic Equipment Facility

C-3, C-4, C-5, C-M In excess of 2,000 ft.², one space for each additional 1,800 ft.² of gross floor area.

M One space for each 3,000 ft.² of gross floor area.

2. By adding a new Subsection 2110 to read as follows:

2110 EXCEPTIONS TO THE SCHEDULE OF REQUIREMENTS: ELECTRONIC EQUIPMENT FACILITIES

2110.1 The Zoning Commission may reduce or eliminate the amount of required parking spaces for an Electronic Equipment Facility as a special exception pursuant to §§ 3036 and 3104.

2110.2 In determining whether to reduce or eliminate parking spaces, the Commission shall give consideration to the following:

- (a) The location of the building housing the EEF;
- (b) The maximum number of employees, customers, or clients who can reasonably be expected to use the proposed EEF at one time;
- (c) The quantity of existing public, commercial, or private parking, other than curb parking, on the property or in the neighborhood which can reasonably be expected to be available; and
- (e) The proximity to public transportation, particularly Metrorail stations, and the availability of public transportation service in the area, or a ride-sharing program approved by the District of Columbia Department of Public Works.

2110.3 If the applicant relies on a ride-sharing program, the applicant shall demonstrate to the Commission that the program shall continue as long as the use continues.

F. Amend Chapter 22, OFF-STREET LOADING REQUIREMENTS, as follows:

1. By amending section 2201.1 to add the following loading berths, loading platforms, and service delivery loading spaces standards for Electronic Equipment Facility:

Electronic Equipment Facility

	Minimum Number and Size of Loading Berths Required	Minimum Number and Size of Loading Platforms	Minimum Number and Size of Service/Delivery Loading Spaces Required
C-3, C-4, C-5, C-M, M			
With 20,000 to 50,000 sq. ft. of gross floor area	1 @ 30 feet deep	1 @ 100 sq. ft.	1 @ 20 feet deep

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With more than 50,000 to 200,000 sq. ft. of gross floor area	2 @ 30 feet deep	2 @ 100 sq. ft.	1 @ 20 feet deep
With more than 200, 000 sq. ft. of gross floor area	3 @ 30 feet deep	3@ 100 sq. ft.	1 @ 20 feet deep

2. By amending section 2202 to add a new subsection 2202.3 to read as follows:

2202.3 The Zoning Commission may grant the special exception relief provided for in section 2202.3 to Electronic Equipment Facilities wherever located, subject to the prerequisites set forth in that subsection.

G. Amend Chapter 30, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE, to add a new section 3036 to read as follows:

3036 ELECTRONIC EQUIPMENT FACILITIES AND ELECTRONIC EQUIPMENT FACILITY PARKING SPACES: ZONING COMMISSION APPROVAL

3036.1 The Zoning Commission shall hear and decide all applications filed under § 3104 for special exception approval under §§ 745, 756, 802A, 822A, 2110 and 2202.3 of an Electronic Equipment Facility or the reduction or elimination of Electronic Equipment Facility off-street parking and loading requirements, including any applications filed prior to November 17, 2000.

3036.2 The Commission shall use the general standards for special exception approval in § 3104, and the specific standards in §§ 745.2, 756.2, 802A.2, 822A.2, 2110.2 and 2202.2 in reviewing and approving the reduction or elimination of Electronic Equipment Facility off-street parking and loading requirements.

3036.3 Except for § 3128 relating to the Commission's *sua sponte* review of Board of Zoning Adjustment orders and decisions, the Commission shall use the Board of Zoning Adjustment Rules of Practice and Procedure in chapter 31 of this title that apply to special exception proceedings in processing, reviewing, and approving Electronic Equipment Facilities or the reduction or elimination of Electronic Equipment Facility off-street parking and loading requirements.

3036.4 At the time of filing an application with the Commission, the applicant shall pay the filing fee specified in § 3180.1(b)(16). The provisions of § 3181 relating to the administration of fees shall apply, except that in an application to be heard by the Commission, the applicant shall appeal any decision of the Director regarding the fee schedule to the Commission, which shall decide the appeal at a meeting or hearing as a preliminary matter to hearing the application.

H. Amend Chapter 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, as follows:

1. By adding new Subsections 3104.7 through 3104.8 to read as follows:

3104.7 The Zoning Commission shall, pursuant to § 3036, hear and decide all applications for special exception approval under §§ 745, 756, 802A, 822A, 2110 and 2202 of an Electronic Equipment Facility or of the reduction or elimination of Electronic Equipment Facility off-street parking and loading requirements. The following table summarizes the uses and structure that may be permitted:

<u>Type of Special Exception</u>	<u>District</u>	<u>Section In Which the Conditions are Specified</u>
Electronic Equipment Facility (not meeting matter of right requirements of §741.8)	C-3, C-4, C-M, or M District	§§ 745.2, 756.2, 802A.2, and 822A.2
Off-street Parking - Electronic Equipment Facility	C-3, C-4, C-5, C-M, or M District	§ 2110.2
Off-street Loading - Electronic Equipment Facility	C-3, C-4, C-5, C-M, or M District	§ 2202.2

3104.8 Except for the *sua sponte* review provisions of § 3128, the Commission shall use the Board of Zoning Adjustment Rules of Practice and Procedure in this chapter in processing, reviewing, and approving all applications for special exception approval of Electronic Equipment Facilities or the reduction or elimination of Electronic Equipment Facilities off-street parking and loading requirements such that wherever a particular provision in this chapter refers to the Board of Zoning Adjustment, the word “Board” shall mean Zoning Commission.

3104.9 The *sua sponte* review provisions of § 3128 do not apply to cases heard and decided by the Commission under this section.

2. By renumbering the first subsection of § 3130 so that it is numbered § 3130.1, renumbering all the subsequent subsections, and amending § 3130.1 to read as follows:

3130.1 No order authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years, or one (1) year for Electronic Equipment Facilities, unless, within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit.