

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302(14) of the D.C. Health Occupations Revision Act of 1985, effective March 15, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of his intent to adopt the following amendment to Chapter 40 of Title 17 DCMR (Business, Occupations & Professions) (May 1990) in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The proposed rules amending Chapter 40 will revise the requirements for the submission of photographs and will notify licensees that the photographs submitted as part of the initial licensing or renewal process will be posted on the Health Professional License Administration website for the purpose of identifying licensees.

Chapter 40 (Health Occupations: General Rules) of Title 17 (Business, Occupations & Professions) (May 1990) is amended as follows:

Section 4001 is amended to read as follows:

**4001 APPLICATION FOR A LICENSE, REGISTRATION, RENEWAL,
OR REINSTATEMENT**

4001.1 An applicant for an initial license or initial registration shall do the following:

- (a) Submit a completed application on the prescribed form;
- (b) Submit for the purposes of printing on the license and publication on the Health Professional Licensing Administration website, two (2) recent passport-type color photographs measuring two inches by two inches (2"x2") which clearly expose the area from the top of the forehead to the bottom of the chin;
- (c) Pay the required fee(s);
- (d) Submit all required supporting documents, with the completed application, including transcripts, character and employment references, certified or validated test scores, and, if applicable, certified proof of licensure in other jurisdictions, except as provided in § 4001 .1(e); and
- (e) Arrange for the required transcript, certification of graduation, test results, certification or proof of licensure to be sent directly to the board from the educational institution, testing service, professional

association or government agency if the educational institution, testing service, association or agency will not provide these documents to the applicant.

Add a new section 4001.2 to read as follows:

- 4001.2 An applicant for a renewal or reinstatement of a license or registration shall do the following:
- (a) Submit a completed application on the prescribed form;
 - (b) Submit for the purposes of printing on the license and publication on the Health Professional Licensing Administration website, two (2) recent passport-type color photographs measuring two inches by two inches (2'x2") which clearly expose the area from the top of the forehead to the bottom of the chin. Such photographs shall be submitted for the renewal period commencing six (6) years from the date of the initial application or initial registration and thereafter, every six (6) years at the date of each subsequent renewal;
 - (c) Pay the required fees; and
 - (d) Submit all required supporting documents.

DEPARTMENT OF HEALTH
NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program and for other purposes approved December 27, 1967 (81 Stat. 744; D. C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1987 hereby gives notice of the adoption of a new Chapter 67 of Title 29 of the District of Columbia Municipal Regulations (DCMR) entitled "Medicaid Program- Liens and Adjustments or Estate Recovery".

In accordance with federal law, the Medicaid Program must seek financial recovery, not to exceed the total amount expended for Medicaid services, from the estate of any individual who received Medicaid benefits at the age of 55 or older. These rules would: (1) identify those services subject to recovery by the Medicaid program; (2) define the criteria for estate recoveries and circumstances where the District would waive recovery based on undue hardship or where recovery is not cost-effective; and (3) establish the collection process and appeal procedures available to the affected parties.

The corresponding District of Columbia State Plan for Medical Assistance ("State Plan") was approved by the Council of the District of Columbia and the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

A notice of proposed rulemaking was published in the *D.C. Register* on May 26, 2006 (53 DCR 4337). Comments on the proposed rules were received. Consistent with the approved State Plan, section 6704.2 (d) was amended to clarify that the Notice of the Proposed Recovery would include procedures and timeframes related to appeal rights. No substantive changes have been made. These rules shall become effective on the date of publication of this notice in the *D.C. Register*.

Title 29 DCMR is amended by adding the following new Chapter 67 (Medicaid Program- Liens and Adjustments or Estate Recovery) to read as follows:

**CHAPTER 67 MEDICAID PROGRAM – LIENS AND ADJUSTMENTS
OR ESTATE RECOVERY**

6700 GENERAL PROVISIONS

6700.1 The purpose of this Chapter is to identify those services subject to recovery by the Medicaid program after the death of the Medicaid recipient; define the criteria for estate recoveries and circumstances where the District may waive recovery based on undue hardship or where

recovery is not cost effective; and establish the collection process and appeal procedures of affected parties.

6700.2 These rules shall be consistent with the requirements set forth in sections 1902 (a) and 1917 (a), (b) and (c) of the Social Security Act and attendant regulations.

6701 SERVICES SUBJECT TO RECOVERY

6701.1 The Medicaid Program may impose a lien on both real and personal property of a Medicaid recipient after the recipient's death subject to the limitations set forth in this Chapter.

6701.2 All services and health premiums paid under the District's State Plan for Medical Assistance including nursing facility services, home and community-based services, and related hospital and prescription drug services paid on behalf of any individual who received medical assistance at age 55 or older shall be subject to recovery against the decedent's estate.

6702 LIMITATIONS

6702.1 The Department of Health, Medical Assistance Administration (MAA) shall not impose a lien against the decedent's home if any of the following persons is lawfully residing in the home:

- (a) the decedent's surviving spouse;
- (b) the decedent's child who is under the age of 21 or is blind or disabled; or
- (c) a sibling of the decedent who has an equity interest in such home and has been residing in the home for a period of at least one year immediately before the date of the decedent's admission to the medical institution.

6702.2 MAA may waive enforcement of any estate recovery claim if it determines that enforcement of the claim would become an undue hardship to an heir, legatee, devisee or other interested person claiming entitlement to receive the assets of the estate.

6702.3 MAA may waive enforcement of any estate recovery claim if it determines that recovery is not cost-effective. Recovery shall not be cost-effective when the amount of the claim is less than one hundred dollars (\$100.00).

6702.4 The home is the dwelling that the individual considers his or her fixed or permanent residence and to which, whenever absent, the person intends to return. The home may be located within or outside the District of

Columbia. Only one dwelling unit may be considered an individual's home.

6702.5 The individual's home includes the real property on which the dwelling is located, all tangible personal property located therein, and any related outbuildings located on the property. Outbuildings necessary to the operation of the home include garage, shed and other buildings for the individual's consumption.

6703 UNDUE HARDSHIP

6703.1 Undue hardship shall exist if one of the following criteria has been met:

- (a) The heir, legatee, devisee or other interested person may become eligible for assistance payments without the proceeds from the estate;
- (b) The decedent's home is the sole-income producing asset of a family business and recovery would result in an heir, legatee, devisee or other interested person losing their means of livelihood. The following two conditions shall be met to qualify under this criteria:
 - (1) The family business has been in operation at the property for at least twelve (12) months preceding the death; and
 - (2) Income from the business provides one hundred percent (100%) of a surviving heir, legatee, devisee or other interested person's livelihood;
- (c) If the heir, legatee, devisee or other interested person is allowed to collect the proceeds from the estate, that individual may become ineligible for assistance payments; or
- (d) Recovery would deprive the heir, legatee, devisee or other interested person of shelter and that individual lacks the financial means to obtain and maintain shelter.

6703.2 Undue hardship shall not exist under any of the following circumstances:

- (a) When recovery would merely inconvenience or restrict the lifestyle of the heir, legatee, devisee or other interested person;
- (b) The heir, legatee, devisee or other interested person divest assets to qualify under the undue hardship provision; or
- (c) Recovery will merely prevent the heir, legatee, devisee or other interested person from receiving an anticipated inheritance.

6703.3 MAA may compromise its claim when collection of the full amount would result in an undue hardship. Consideration may be given to the following factors:

- (a) Contribution by the heir, legatee, devisee or other interested person to the value of the asset or to the support or care of the decedent;
- (b) Any outstanding debt with a higher priority, such as a mortgage, which has been assumed by the heir, legatee, devisee or other interested person; and
- (c) Other compelling circumstances as determined by the District.

6703.4 Any waiver for undue hardship described in section 6703.1 shall only apply to the proportionate share of the decedent's estate that passes to the heir, legatee, devisee or other interested person.

6704 PROCEDURES FOR WAIVING ESTATE RECOVERY

6704.1 The application for Medicaid benefits shall contain language to inform each Medicaid applicant that recoveries against the estate of each Medicaid recipient may be undertaken.

6704.2 MAA shall provide written notice of the proposed recovery to the personal representative or attorney of record prior to asserting any claim or recovery against the estate. The written Notice of Proposed Recovery shall include all of the following information:

- (a) Itemization of the claim of medical services paid by the Medicaid program;
- (b) Legal basis for the claim;
- (c) All exemptions from recovery; and
- (d) Procedures for applying for undue hardship including appeal rights and time frames.

6704.3 The personal representative or attorney of record shall request an Undue Hardship Waiver Application (Application) no later than fifteen (15) business days from the date of the Notice of Proposed Recovery.

6704.4 The personal representative or attorney of record shall submit the completed application and supporting documentation to MAA no later than thirty (30) calendar days of receipt of the application.

6704.5 An application that has not been completed in its entirety or fails to contain documentation in support of the request for hardship waiver shall be considered incomplete. MAA shall deny each incomplete application

and issue a denial notice to the personal representative or attorney of record. The denial notice shall contain all of the following information:

- (a) A statement explaining why the application is incomplete, including a description of the missing information or documentation;
- (b) Appeal rights and procedures for filing an appeal; and
- (c) Notification that the personal representative or attorney has five (5) additional working days from the date of the denial notice to submit the completed application and supporting documentation.

6704.6 MAA shall mail a formal written response to the personal representative or attorney of record within thirty (30) calendar days of receipt of the completed application and supporting documents. If the application is denied, the written response shall include the reasons for the denial and notify the affected persons of the right to appeal, the time frame and procedures for filing an appeal.

6704.7 MAA shall seek recovery of the full amount of the claim if the application is untimely or incomplete as set forth in sections 6704.4 and 6704.5.

6705 APPEALS

6705.1 Decisions made by MAA and communicated in the formal response described in subsections 6704.5 and 6704.6, may be appealed, within thirty (30) days of the date of MAA's letter notifying the personal representative or attorney of record of the decision, to the Office of Administrative Hearings.

6705.2 Filing an appeal shall not stay the District's ability to file a claim against the decedent's estate.

6799 DEFINITIONS

When used in this Chapter, the following terms and phrases shall have the meanings ascribed:

Devisee means a recipient of property, usually real property, by will.

Estate shall include all real and personal property and any interest in such property that is owned by the decedent and that does not pass at the time of decedent's death to another person by the terms of the instrument under which it is held or by operation of law.

Equity Interest in the Home means the value of the individual's home less the unpaid principal balance of any loans or other liens or encumbrance affecting the individual home.

Heir shall have the same meaning as set forth in D.C. Official Code § 20-101.

Home means any dwelling unit in which an individual has an ownership interest and is used as the individual's principal place of residence. Such dwelling may consist of a house, boat, trailer, mobile home or other habitation.

Interested person shall have the same meaning as set forth in D.C. Official Code § 20-101.

Lawfully Residing means maintaining the domicile legitimately or without violating the law, as evidenced by the receipt of mail at the residence, payment of property taxes, property insurance or utility expenses for the residence.

Legatee shall have the same meaning as set forth in D.C. Official Code § 20-101.

Personal representative shall have the same meaning as set forth in D.C. Official Code § 20-101.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health pursuant to the authority set forth under § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 ("Act"), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of his intent to take final rulemaking action to adopt the following amendments to Chapter 73 of Title 17 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The proposed amendments establish standards of conduct for persons who are registered as addiction counselors.

Chapter 73 (Addiction Counselors) of Title 17 DCMR (Business, Occupations & Professions) (May 1990) is amended by adding a new section 7304 to read as follows:

7304 STANDARDS OF CONDUCT

- 7304.1 A registered addiction counselor shall provide counseling services only under the general supervision of a licensed professional counselor or other licensed mental health professional.
- 7304.2 A registered addiction counselor shall not discriminate against clients or professionals based on race, religion, age, gender, disability, national ancestry, sexual orientation or economic condition.
- 7304.3 A registered addiction counselor shall be knowledgeable about any disabilities which clients have and shall make available physical, sensory, and cognitive accommodations that allow clients with disabilities to receive services.
- 7304.4 A registered addiction counselors who is aware of unethical conduct or of unprofessional modes of practice by other registered addiction counselors shall report such inappropriate behavior to the appropriate authority.
- 7304.5 A registered addiction counselor shall not offer services or use techniques outside of his or her competency.
- 7304.6 A registered addiction counselor shall seek appropriate treatment if he or she is impaired.
- 7304.7 A registered addiction counselor shall comply with all federal District of Columbia laws governing the practice of alcoholism and drug abuse counseling.

- 7304.8 A registered addiction counselor shall not claim either directly or by implication, professional qualifications or affiliations that he or she does not possess.
- 7304.9 A registered addiction counselor shall promote the protection of the public health, safety and welfare and the best interest of the client as a primary guide in determining his or her conduct.
- 7304.10 A registered addiction counselor shall disclose his or her standards of conduct, professional loyalties and responsibilities to all clients.
- 7304.11 A registered addiction counselor shall terminate a counseling relationship when it is reasonably clear that the client is not benefiting from the relationship.
- 7304.12 A registered addiction counselor shall hold the welfare of the client paramount when making any decisions or recommendations concerning referral, treatment procedures or termination of treatment.
- 7304.13 A registered addiction counselor shall not use or encourage a client's participation in any demonstration, research or other non-treatment activities when such participation would have potential harmful consequences for the client or when the client is not fully informed.
- 7304.14 A registered addiction counselor shall provide services in an environment that ensures the privacy and safety of the client at all times and ensure the appropriateness of service delivery.
- 7304.15 A registered addiction counselor shall not disclose confidential information acquired without appropriately executed consent.
- 7304.16 A registered addiction counselor shall provide the client his or her rights regarding confidentiality, in writing, as part of informing the client in any areas likely to affect confidentiality including the recording of the clinical interview or the use of material for training or observation by another party.
- 7304.17 A registered addiction counselor shall do the following:
- (a) Use appropriate provisions for the maintenance of confidentiality and the ultimate disposition of confidential records;
 - (b) Ensure that data obtained, including any form of electronic communication, is secured by the available security methodology; and

- (c) Limit data to information that is necessary and appropriate to the services being provided and be accessible only to appropriate personnel.
- 7304.18 A registered addiction counselor shall adhere to all federal and District of Columbia laws regarding confidentiality and the counselor's responsibility to report clinical information in specific circumstances to the appropriate authorities.
- 7304.19 A registered addiction counselor shall do the following:
- (a) Discuss the information obtained from clients only in the appropriated settings for professional purposes that are in the client's best interest; and
 - (b) Present in written and oral reports only germane data for the purposes of evaluation, diagnosis, progress and compliance.
- 7304.20 A registered addiction counselor shall use clinical and other material in teaching or writing only when there is no information used about the parties involved.
- 7304.21 A registered addiction counselor shall inform the client and obtain the client's agreement in areas likely to affect the client's participation including:
- (a) The recording of an interview;
 - (b) The use of interview material for training purposes; or
 - (c) Observation of an interview with another person.
- 7304.22 A registered addiction counselor shall not engage in professional relationships or commitments that conflict with family members, friends, close associates or others whose welfare might be jeopardized by such a dual relationship.
- 7304.23 A registered addiction counselor shall not exploit relationships with current or former clients for personal gain, including social or business relationships.
- 7304.24 A registered addiction counselor shall not, under any circumstances, engage in sexual behavior with current or former clients.
- 7304.25 A registered addiction counselor shall not accept as clients anyone with whom they have engaged in sexual behavior.

- 7304.26 A registered addiction counselor shall refrain from offering professional services to a client in counseling with another professional except with the knowledge of the other professional or after the termination of the client's relationship with the other professional.
- 7304.27 A registered addiction counselor shall cooperate with duly constituted professional ethics committees or licensing boards and promptly supply necessary information unless constrained by the demands of confidentiality.
- 7304.28 A registered addiction counselor shall not in any way exploit relationships with coworkers, employees, student research participants or volunteers.
- 7304.29 A registered addiction counselor shall inform the client of all financial policies.
- 7304.30 A registered addiction counselor shall consider the ability of a client to meet the financial cost in establishing rates for professional services.
- 7304.31 A registered addiction counselor shall not engage in fee splitting.
- 7304.32 A registered addiction counselor shall not send or receive any commission or rebate or any other form of remuneration for referral of clients for professional services.
- 7304.33 A registered addiction counselor, engaged in the practice of counseling, shall not at any time use his or her relationship with clients for personal gain or for the profit of any agency or any commercial enterprise of any kind.
- 7304.34 A registered addiction counselor shall not accept a private fee for professional work with a person who is entitled to such services through an institution or agency unless the client is informed of such services and still requests private services.

**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(i).

C. Chapter 8, INDUSTRIAL DISTRICTS, is amended as follows by adding new §§ 802.21 through 802.24 and 822.15 through 822.18 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.
- ***
- 822.15 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.
- 822.16 The animal boarding use shall be located and designed to create no condition objectionable to adjacent properties resulting from animal noise, odor, or waste.
- 822.17 The animal boarding use shall not abut a Residence District.
- 822.18 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*.