

## DISTRICT DEPARTMENT OF TRANSPORTATION

### NOTICE OF FINAL RULEMAKING

The Director of the District Department of Transportation (Department), pursuant to the authority set forth in section 4(5)(A) (coordinating and managing public space permits and records), section 5(4)(A) (assigning duty to review and approve public space permit requests), and section 6(b) (transferring the public right-of-way maintenance function previously delegated to the Department of Public Works (DPW) under section III (F) of Reorganization Plan No. 4 of 1983 to the Department) of the Department of Transportation Establishment Act of 2002 (DDOT Establishment Act), effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.03(5)(A), 50-921.04(4)(A), and 50-921.05(b)), and Title VI of the Fiscal Year 1997 Budget Support Act of 1996, effective April 9, 1997 (D.C. Law 11-198; D.C. Official Code §§ 10-1141.01, *et seq.*), which was delegated to the Director of DPW pursuant to Mayor's Order 96-175, dated December 9, 1996, and subsequently transferred to the Director of the Department in section 7 of the DDOT Establishment Act (transferring to the Director of the Department all transportation-related authority previously delegated to the DPW Director) (D.C. Official Code § 50-921.06), hereby gives notice of the adoption of the following rulemaking to amend Title 24 (Public Space and Safety) of the District of Columbia Municipal Regulations (DCMR).

The rulemaking amends subsection 225.1 by changing the fee for a “residential moving truck” from thirty-four dollars (\$34) to fifty dollars (\$50) to be consistent with the minimum fee charged for other temporary occupancy permits; changing the name of the public space use fee from the “fair market component of permit fee”, which in practice proved to be a confusing term, to the “public inconvenience fee”; clarifying that the public inconvenience fee will be charged following a one-time thirty (30) calendar day grace period per permit; clarifying that the public inconvenience fee applies only to the temporary occupancy of public space; clarifying that the fee for the occupancy of a parking lane applies only to areas of the parking lane not served by parking meters; reducing the fee for the second and each additional travel lane by twenty-five percent (25%); adding a monthly cap to the fee for travel lanes, alleys, and sidewalks; adding a one hundred percent (100%) fee credit for all of the sidewalk area where the pedestrian pathway is maintained with a covered or open walkway as a means to encourage this practice; and removing the public utility company exemption from paying the public space use fee. In addition, the paragraph headings for paragraphs (d) through (k) of subsection 225.1 will be amended to remove the phrase pertaining to the first thirty (30) days and the phrase pertaining to the fair market component because these phrases no longer apply.

The rulemaking amends subsection 225.2 to clarify that the fifty dollar (\$50) per month fee for temporary occupancy of the public space does not apply to ladders and scaffolding placed in residential areas located on unpaved parking.

The rulemaking amends subsection 225.3 to remove the current refund language because it is no longer applicable and replace it with a simpler process to obtain a refund.

The rulemaking adds subsections 225.9 through 225.11 to stipulate when the public inconvenience fee for the temporary occupancy of public space may be waived by the Director and provide a one-time phase-in schedule for the public inconvenience fee based on project size and scope as a means of allowing those affected by the changes more time to plan for this additional fee.

The rulemaking adds a new section 226, entitled “Public Space Permits,” to provide notice that a separate public space permit for temporary occupancy pursuant to subsection 225.1(b) is required during the specific period of time when the work associated with the permitted item pursuant to paragraphs (d) through (k) of subsection 225.1 is being performed, as well as stipulating when the Director may waive this requirement. In addition, this section clarifies when permits for items shown in paragraphs (d) through (k) of subsection 225.1 will become invalid.

The rulemaking amends section 299, “Definitions,” by adding a new definition for the term “street right-of-way frontage”.

The proposed rule was published in the *D.C. Register* at 57 DCR 11332 (November 26, 2010)

One comment was received regarding the proposed rulemaking. The Department reviewed the comments and will not amend the current proposed rulemaking. The commentator raised concerns that this rule will impose duplicative fees on permittees. However, there are generally two separate fees being created in this rule, one to offset the cost of the agency to administer the permitting system; and a second fee to compensate the District for the inconvenience imposed on the District, and the subsequent impact on the greater District infrastructure based on the permit. The commenter also incorrectly stated that this rule would require multiple permits for trenching, sheeting and shoring, and manhole installation associated with a single manhole excavation project; however, only a manhole excavation permit will be required.

**Chapter 2 of Title 24, DCMR, is amended as follows:**

**Section 225 is amended by amending paragraphs (a) through (o) in Subsection 225.1 to read as follows:**

225.1           The following schedule of fees shall apply to public space permits:

Description of Permit	Permit Fee
(a) Administrative:	
Application Fee (New or Renewal)(Public Utilities Exempt)	\$50.00
(b) Temporary Occupancy:	
(1) General Temporary Occupancy (fee per month unless otherwise noted)	\$50.00
Unless noted in § 225.1(b)(2), all temporary occupancy fees will be fifty dollars (\$50.00) per month.	
(2) Specific Temporary Occupancy	
Notwithstanding the provisions of § 225.1(b)(1), the following specific temporary occupancy fees apply:	
(A) Residential Moving Trucks (2 days maximum)	\$50.00
(B) Man Hole Access (each occurrence)	\$85.00
(C) Man Hole Access (Annual Permit)	\$2,585.00
(D) Receptacles for construction debris (e.g., Dumpsters™) placed in public space in areas zoned CR, C-1 through C-5, CM, M, SP-1 and SP-2, and W-1 through W-3:	Permit Fee Per Month
Months 1, 2, and 3	\$75.00
Months 4 and 5	\$100.00
Month 6 or more	\$150.00

(E) Receptacles for construction debris (e.g., Dumpsters™) placed in public space in areas zoned R-1 through R-5:	Permit Fee Per Month
Months 1, 2, and 3	\$75.00
Months 4 and 5	\$125.00
Month 6 or more	\$200.00

(c) Public Inconvenience Fee

In addition to those fees in paragraph (b) of this subsection, a public inconvenience fee for the temporary occupancy of public space in excess of a one-time thirty (30) calendar day grace period per permit shall be applied as follows:

(1) Within the Central Business District, as defined in 18 DCMR § 9901:	Fee/Sq-Ft/Day
Parking Lane (where no parking meters exist)	Fee established for prohibiting parking in 18 DCMR §§ 2407.20 and 2407.21
1 <sup>st</sup> Travel Lane (to include lanes dedicated for use by bicycles)(\$2,250 maximum fee per block per 30 days)	\$0.040
2 <sup>nd</sup> Travel Lane and Each Additional (\$2,250 maximum fee for each lane per block per 30 days)	\$0.060
Alley (\$2,250 maximum fee per block per 30 days)	\$0.020
Sidewalk (\$3,000 maximum fee per block per 30 days)	\$0.030

	Pedestrian Walkway Credit (for 100% of sidewalk area where the pedestrian pathway is maintained per DDOT Pedestrian Safety and Work Zone Standards: Covered and Open Walkway)	-\$0.030
(2)	Outside the Central Business District, as defined in 18 DCMR § 9901:	Fee/Sq-Ft/Day
	Parking Lane (where no parking meters exist)	Fee established for prohibiting parking in 18 DCMR §§ 2407.20 and 2407.21
	1 <sup>st</sup> Travel Lane (to include lanes dedicated for use by bicycles)(\$2,250 maximum fee per block per 30 days)	\$0.030
	2 <sup>nd</sup> Travel Lane and Each Add'l (\$2,250 maximum fee for each lane per block per 30 days)	\$0.045
	Alley (\$2,250 maximum fee per block per 30 days)	\$0.015
	Sidewalk (\$3,000 maximum fee per block per 30 days)	\$0.020
	Pedestrian Walkway Credit (for 100% of sidewalk area where the pedestrian pathway is maintained per DDOT Pedestrian Safety and Work Zone Standards: Covered and Open Walkway)	-\$0.020
(d)	Fixture(s) and Paving (in Public Parking):	Permit Fee
	Fence	\$50.00
	Fence w/Brick Piers	\$75.00
	Retaining Wall	\$75.00
	Planter Box (each)	\$75.00

Coping	\$75.00
Steps	\$75.00
Over-Height Fence or Wall	\$135.00
Minor Repair of Fence, Wall or Paving	\$50.00
Paving (up to 150 square feet)	\$75.00
<b>(e) Fixture(s) and Paving (other):</b>	<b>Permit Fee</b>
Pay Phone (each)	\$75.00
Street Furniture	\$135.00
Raised Planter Box(es) on Sidewalk	\$135.00
Moveable Planter Box(es) on Sidewalk	\$135.00
Bollards	\$135.00
Sign(s)	\$135.00
Canopy Sockets	\$75.00
Paving (up to 150 square feet)	\$75.00
Repair/Replace Existing Driveway	\$75.00
Close Existing Driveway	\$75.00
New Residential Driveway	\$75.00
New Commercial Driveway	\$135.00
New Circular Driveway	\$135.00
Sidewalk Paving (up to 300 linear feet)	\$135.00
Curb & Gutter (up to 300 linear feet)	\$135.00
Alley Paving/Roadway Paving (up to 300 linear feet)	\$135.00
Resurface Roadway (up to 300 linear feet)	\$75.00

	Subsurface Fuel Tank (each – new or replacement)	\$250.00
	Other Fixture(s) or paving in public space	\$135.00
(f)	Building Projections:	Permit Fee
	Porches & Steps (each)	\$75.00
	Areaway (each)	\$75.00
	Window Well (each)	\$75.00
	Bay Window (each)	\$75.00
	Projections Requiring Exception from Building Code (See 12 DCMR A § 3202.4) (each)	\$135.00
(g)	Grading:	Permit Fee
	Roadways, sidewalks and alleys	\$0.00
(h)	Trees and Landscaping:	Permit Fee
	Plant Public Space Tree(s)	\$0.00
	Remove Public Space Tree(s)	\$100.00
	Plant Hedge(s)	\$75.00
	Other Landscaping (Commercial)	\$75.00
	Prune Street Tree(s)	\$75.00
	Build New Tree Space(s)	\$75.00
	Install Tree Fence(s)	\$50.00

(i) Minor Excavation:	Permit Fee
(1) Non-House Service	
Test Pits, Boring, and Cores (single)	\$50.00
Test Pits, Boring, and Cores (Each additional)	\$20.00
Monitor Wells (single)	\$135.00
Monitor Wells (Each additional)	\$20.00
Conduit Relocation (up to 10 linear feet)	\$50.00
Other Minor Excavation (up to 100 square feet and not requiring sheeting and shoring)	\$85.00
(2) House Service (each premise)	
Water/Fire Connection/Abandonment/Repair – up to 2 inch pipe size	\$50.00
Water Meter Pit and associated Pipe up to 2 inches	\$50.00
Gas Connection/Abandonment/Repair	\$50.00
Electric Connection/Abandonment/Repair	\$50.00
Communication Connection/Abandonment/Repair	\$50.00
Sanitary Sewer Connection/Abandonment/Repair – up to 4 inch pipe size	\$85.00
Storm Sewer Connection/Abandonment/Repair – up to 4 inch pipe size	\$85.00

(j) Major Excavation:	Permit Fee
Regulator Stations, above and below ground, and associated appurtenances installation or removal (each)	\$135.00
Washington Gas and Light – System Monitoring/Telemetric Equipment installation or removal (each)	\$85.00
Washington Gas and Light – Non-Emergency maintenance related excavations such as for cathodic protection activities, encapsulations, other O & M activities (each)	\$85.00
Gas Service Connection/Abandonment/Repair (each)	\$85.00
Electric Service Connection/Abandonment/Repair only	\$85.00
Electric Service Connection/Abandonment/Repair and associated Manhole and Conduit (each)	\$135.00
Transformer Vault and associated Manhole and Conduit (each)	\$250.00
Water/Fire Connection/Abandonment/Repair (each – over 2 inch pipe size)	\$85.00
Water Meter Manhole and associated piping(each)	\$135.00
Fire Hydrant Installation/Repair/Removal (each)	\$85.00
Sanitary/Storm Sewer Connection/Abandonment/Repair (each – over 4 inch pipe size)	\$135.00
Sanitary/Storm Sewer Manhole (each)	\$135.00
Communication Manhole (each)	\$135.00
Utility or Communication Excavation for Pipe, Conduit or Cable (each 200 linear feet or portion	\$135.00

thereof)

Sheeting and Shoring (each 100 linear feet or portion thereof) \$135.00

Abandonment or Removal of Subsurface Fuel Tank or Vault (each) \$135.00

(k) Overhead Electrical/Communication: Permit Fee

(1) Install/Remove/Replace Overhead Electrical/Communication Wire

Up to 300 linear feet \$50.00

Each additional 300 linear feet or portion thereof \$20.00

(2) Install/Remove/Replace Utility/Communication Pole with or without Guy Wire

First Pole \$50.00

Each Additional Pole \$20.00

(3) Install/Remove/Replace Guy Wire for Utility/Communication Pole

First Guy Wire \$50.00

Each Additional Guy Wire \$20.00

(l) Moving Overweight, Over-length, or Over-width equipment (excluding permits issued to the federal government): Permit Fee

Single Trip (each) \$30.00

Round Trip (each) \$50.00

(m)	Miscellaneous:	Permit Fee Per Month
	All miscellaneous permits primarily benefitting the applicant	\$50.00
(n)	Inspection Fee:	Fee per Hour
	Additional fee for any needed inspection of paving, repairing or altering of public space	\$50.00/hr
(o)	Public Space Abutting Business (see § 201.1):	One-Time Permit Fee
	Use of public space by operators of abutting businesses	\$139.00

**Subsection 225.2 is amended to read as follows:**

225.2 Notwithstanding the provisions of § 225.1, ladders and scaffolding placed in residential areas located on unpaved parking shall not require a permit and shall be exempt from the temporary occupancy fee.

**Subsection 225.3 is amended to read as follows:**

225.3 A refund of public space fees shall be made as follows:

- (a) If no public space occupancy occurred, or will occur, for the entire duration of the permit authorizing the temporary occupancy, and if the request for the refund is made, in writing, to the Director within one hundred eighty (180) days from the date the permit authorizing the occupancy was issued and the permit and receipt are returned to the public space permit office, all public space fees shall be refunded, except for the following:
  - (1) A fifty dollar (\$50.00) administrative fee to process the refund;
  - (2) The initial fifty dollar (\$50.00) application fee to process the permit; and

- (3) The cost of inspection to verify that no occupancy occurred, based on fifty dollars (\$50.00) per inspector hour.
- (b) Failure to provide a request for refund within the time and manner specified in § 225.3(a) will result in complete forfeiture of all public space fees associated with that permit.

**New subsections 225.9 through 225.11 are added to read as follows:**

- 225.9 The Director may waive the public inconvenience fee set forth in § 225.1(c) for the temporary occupancy of:
- (a) Public space that is being occupied strictly for the purpose of restoring public space following an excavation or construction project, and only for the time needed to restore public space;
  - (b) A public alley that is totally contained within a work zone associated with a land development or redevelopment project; provided, that the temporary closing will not prohibit the only vehicular or pedestrian access to:
    - (1) The side or rear of a private property abutting the work zone; or
    - (2) Another public alley that provides the only vehicular or pedestrian access to the side or rear of abutting private property; or
  - (c) A public street right-of-way that is totally contained within a work zone associated with a land development or redevelopment project, if:
    - (1) The street classification, as shown in District records, is a local street or no street classification is shown; and
    - (2) The temporary closing will not prohibit vehicular or pedestrian access to any private property.
- 225.10 No public inconvenience fee set forth in § 225.1(c) shall be charged for the renewal of an existing public space permit for the temporary occupancy of public space pertaining to construction or excavation staging, if the original public space permit for temporary occupancy was applied for prior to the implementation date set forth in § 225.11.

225.11 The implementation date of the public inconvenience fee set forth in § 225.1(c) shall be as follows:

- (a) For construction staging or excavation on public space associated with construction activities on private property, the public inconvenience fee shall begin to be assessed on the date of publication of the final rulemaking notice in the D.C. Register, except where the associated construction is a new building construction or building reconstruction.
- (b) For construction staging or excavation on public space associated with new building construction or building reconstruction activities:
  - (1) The inconvenience fee will begin to be assessed on the date of publication of the final rulemaking notice in the D.C. Register for projects having one hundred (100) linear feet of street right-of-way frontage or less;
  - (2) The inconvenience fee shall begin to be assessed on October 1, 2011, for projects having one hundred one (101) to three hundred (300) linear feet of street right-of-way frontage;
  - (3) The inconvenience fee shall begin to be assessed on April 1, 2012, for projects having three hundred one (301) to seven hundred (700) linear feet of street right-of-way frontage; and
  - (4) The inconvenience fee shall begin to be assessed on October 1, 2012, for projects having seven hundred one (701) or more linear feet of street right-of-way frontage.
- (c) For construction staging or excavation on public space performed by a utility company or other party with infrastructure within the street right-of-way, the public inconvenience fee shall be phased in as follows:
  - (1) The inconvenience fee will begin to be assessed on the date of publication of the final rulemaking notice in the D.C. Register for utility work for service projects done for private parties in connection with construction or other improvements on private property; and

- (2) The inconvenience fee will begin to be assessed on October 1, 2012, for utility work that is done as a planned system improvement project to upgrade or install new utility main lines.
- (d) Notwithstanding § 225.1(a) and (b), the inconvenience fee shall begin to be assessed on the date of publication of the final rulemaking notice in the D.C. Register for projects that will cause eighty percent (80%) or more of the street right-of-way width to be closed, except as set forth in § 225.9(c).

**A new Section 226, PUBLIC SPACE PERMITS, is added to read as follows:**

**226 PUBLIC SPACE PERMITS**

- 226.1 A permit is required for work within, or occupancy of, public space.
- 226.2 A separate public space permit shall be required for each type of temporary occupancy listed in paragraphs (d) through (k) of § 225.1. In addition, an applicant shall pay the general temporary occupancy fee pursuant to § 225.1(b) for each affected area. Each separate public space permit must be in effect during the specific time period needed to perform the work associated with the permit.
- 226.3 Notwithstanding the provisions of § 226.2, the Director may waive the requirement for a separate public space permit for temporary occupancy during:
  - (a) The installation or repair of fixtures and paving located on public parking pursuant to § 225.1(d);
  - (b) The installation of fixtures pursuant to § 225.1(e); or
  - (c) The installation of trees or landscaping pursuant to § 225.1(h).
- 226.4 (a) A permit issued pursuant to paragraphs (d) through (k) of § 225.1 shall become invalid if:
  - (1) The authorized work is not begun within one (1) year after the issue date shown on the permit; or
  - (2) The authorized work is suspended or abandoned for a period of one (1) year after the date work is begun.

- (b) If an application is filed to renew a permit prior to the permit becoming invalid, the permit fee for the renewal shall be fifty dollars (\$50.00).

**Section 299 is amended by inserting the following new definition in alphabetical order:**

**Street right-of-way frontage** – the section of the public space abutting the affected private property.