

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF PLANNING



Office of the Director

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**MEMORANDUM**

**TO:** Zoning Commission for the District of Columbia

**FROM:** *LS for*  
Harriet Iregoning  
Director

**DATE** April 13, 2007

**SUBJECT:** Supplemental Report for Text Amendments to change eating establishment definitions, initiated by ANC 6A. 06-23

**RECOMMENDATION**

The Office of Planning recommends approval of the proposed text amendments to the definitions and permitted use lists for eating establishments

**BACKGROUND**

The most recent version of the restaurant definitions in the zoning ordinance date from 1986. These definitions separate "restaurants" and "fast food restaurants" by means of calculations in the fast food definition regarding queuing area, pre-prepared food, and disposable tableware. The impact of the definition differences is important in the C-1 and C-2 districts. Restaurants are allowed as a matter-of-right in all C districts. Fast food restaurants are prohibited in the C-1 district, require special exception approval in the C-2-A district, and have additional requirements for matter-of-right approval in the C-2-B and C-2-C districts.

The existing language for differentiating between "restaurant" and "fast food restaurant" has largely become outdated. The ever-evolving business model in the restaurant industry allows for increasing flexibility in layout, service style, and food preparation. This has led to increasing confusion between neighborhoods and DCRA in recent years, including the parts of the H Street N.E. corridor represented by ANC 6A. Specifically, there have been cases where restaurants considered by the neighborhood to constitute fast food have been able to meet the zoning definition of a restaurant and have been granted matter-of-right approval as such in the C-2-A zone.

**PROPOSAL**

The proposed text has changed significantly from the setdown report. Working with the Office of the Attorney General, the Zoning Administrator, and the applicant, OP has modified the original language proposed by ANC 6A. The modifications accomplish several goals. First, the definition of restaurant is simplified and clarified. Conversely, the definition of fast food establishment is changed to include the distinctions between restaurants and fast food establishments. These changes are limited to aspects that have a

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relationship to the difference in impacts between the two uses. Specifically, OP concentrated on the amount of traffic served by the establishment and the amount of trash, odors, and adverse effects produced. This led to three specific characteristics that indicated a capacity to serve a high number of people or produce a large amount of trash: the presence of a drive-thru, customers paying for food prior to consuming it, and food being served on anything other than non-disposable plates.

The language was crafted to include indicators of the differences that could be determined on a set of building plans by the Zoning Administrator's office. These indicators are not meant to be the sole measure of a fast food restaurant, but indicative to plan reviewers of the characteristics defining a fast food establishment.

In addition to restaurants and fast food establishments, the new text also provides for a third type of eating establishment. The "Prepared Food Shop" is meant to be a catchall category for small, low-impact, neighborhood food establishments. This category is intended to subsume delicatessens, coffee shops, ice cream parlors, and other similar businesses. It is considered neighborhood friendly without the adverse impacts of fast food establishments and therefore allowed in the C-1 and above when there are twelve or fewer seats. Above this number, it would be considered to have a larger potential for impacts and would require a special exception in the C-1 and C-2-A districts.

With the creation of this use, OP recommends deletion of all references to delicatessen, coffee shop, and ice cream parlor. Businesses with existing certificates of occupancy under these uses would update their certificate of occupancy with a new building permit or change of ownership, potentially getting a special exception as needed.

**Proposed Text:**

1 Section 199, Definitions, § 199.1, is amended as follows:

(a) Insert the following new definitions in alphabetical order:

**Fast food establishment** - a place of business where food is cooked on the premises and sold to customers for consumption and one of the following conditions apply:

- (a) The premises include a drive-through;
- (b) Customers pay for the food before it is consumed. This element is satisfied if the building permit plans depict a service counter without seating unless the applicant certifies that the intended principal use is for a restaurant or grocery and that the counter is part of a carry out service that is clearly subordinate to that principal use; or

- (c) Food is served on/in anything other than non-disposable plates. This element is satisfied if the building permit plans do not depict a dishwasher or do depict trash receptacles in public areas.

A proposed or existing establishment meeting this definition shall not be deemed to constitute any other use permitted under the authority of these regulations, except that a restaurant or grocery store providing carryout service that is clearly subordinate to its principal use shall not be deemed a fast-food establishment.

**Prepared food** – food that is assembled, but not cooked, on the premises of a prepared food shop. This term includes such food items as sandwiches, wraps, and sushi.

**Prepared food shop** - a place of business that offers seating or carry out service, or both, and which is principally devoted to the sale of prepared food, non-alcoholic beverages, or cold refreshments. This term includes an establishment known as a sandwich shop, coffee shop, or an ice cream parlor.

- (b) Delete the definition "Restaurant, fast food."
- (c) Amend the definitions of "drive-through", "restaurant", and Food delivery service to read as follows:

**Drive-through** - a system designed to permit customers of a ~~restaurant, fast food establishment, restaurant, bank, dry cleaning or other establishment~~ to obtain goods or services by driving through the property and conducting the transaction while the customer remains within a motor vehicle. The system has two (2) major parts: a vehicular queuing lane or lanes, and one (1) or more service locations where customers place orders or receive services or both. No part of this definition shall be construed to apply to a gasoline service station.

**Food delivery service** - a ~~restaurant, delicatessen, prepared food shop, or fast food establishment~~ restaurant in which the principal use is delivery of prepared food by motor vehicle to customers located off the business premises. Seating and tables for customers may or may not be provided for on-premises consumption, but if present are clearly subordinate to the principal use of delivering prepared food to off-site customers. Any establishment that derives more than seventy-five percent (75%) of its sales from delivery orders will be considered a food delivery service in all cases. This definition does not include catering establishments.

**Restaurant** - a place of business, which does not meet the definition of a "fast food establishment", where food, ~~drinks or refreshments are prepared~~ is cooked on the premises and sold to customers primarily for consumption on the premises. ~~This term shall include but not be limited to an establishment known as a café, lunch counter, cafeteria, or other similar business, but shall not include a fast food restaurant. In a restaurant, a~~ Any facilities for carryout shall be clearly

subordinate to the principal use of providing prepared foods for consumption on the premises

2 Section 601, Uses as a Matter of Right (CR), § 601 1(i), is amended to read as follows.

- (i) Private club, restaurant, prepared food shop, fast food ~~restaurant establishment~~, or food delivery service, provided a fast food restaurant establishment, or food delivery service shall not include a drive-through,

3 Chapter 7, COMMERCIAL DISTRICTS, is amended as follows

(a) Section 701, Uses as a Matter of Right (C-1), is amended as follows

- (i) By amending § 701 4 (q) to read as follows

- (q) Restaurant, but not including a fast food ~~restaurant establishment~~, a drive-in restaurant, or a food delivery service

- (ii) By Adding a new § 701 4 (aa) to read as follows

- (aa) Prepared food shop, twelve or fewer seats for patrons

(b) Section 704, Special Exceptions General (C-1), § 704 1, is amended to read as follows

704 1 The following uses as specified in §§ 706 through ~~711~~ 712 shall be permitted as special exceptions in a C-1 District if approved by the Board of Zoning Adjustment under § 3104

(c) By adding a new § 712 to read as follows

**712 PREPARED FOOD SHOP**

712 1 A Prepared Food Shop with more than twelve seats for patrons shall be permitted in a C-1 District as a special exception if approved by the Board of Zoning Adjustment under 3104

(d) Section 721, Uses as a Matter of Right (C-2), is amended as follows

- (i) Subsection 721 3 (t) is amended by striking the phrase “fast food restaurant” and inserting the phrase “fast food establishment” in its place

- (ii) By adding a new § 721 3 (t) to read as follows

- (t) Prepared food shop, except that in a C-2-A district, a prepared food shop with greater than twelve seats for patrons shall be only be permitted by special exception pursuant to 11 DCMR 712
- (e) Sections 733, 741 3 (c), and 743 4 are amended by striking the phrase “fast food restaurant” wherever it appears and inserting the phrase “fast food establishment” in its place
- (f) Subsections 742 4, 752.4, and 761.6 (governing the use of drive-throughs as accessory uses in the C-3 through C-5 zone districts) are amended by striking the phrase “fast food restaurant, delicatessen, or carryout” and inserting the phrase “fast food establishment” in its place
- 4 Chapter 8, INDUSTRIAL DISTRICTS, §§ 801 10 and 821 5 (governing the use of drive-throughs as accessory uses in the C-M and M zone districts) are amended by striking the phrase “fast food restaurant, delicatessen, or carryout” and inserting the phrase “fast food establishment” in its place
- 5 Chapter 9, WATERFRONT DISTRICTS, Section 901, Uses as a Matter of Right (W), § 901 1 (j), is amended to read as follows
  - (j) Private club, restaurant, fast food ~~restaurant~~ establishment, Prepared food shop, or food delivery service, provided that a fast food ~~restaurant~~ establishment, or food delivery service shall not include a drive-through,
- 6 Chapter 13, NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT is amended as follows
  - (a) Section 1307, Woodley Park Neighborhood Commercial Overlay District, § 1307 5, is amended to read as follows.
    - 1307.5 No hotel, inn, or fast food ~~restaurant~~ establishment shall be permitted in the WP Overlay District
  - (b) Section 1309, Eight Street Southeast Neighborhood Commercial Overlay District, § 1309 4, is amended to read as follows.
    - 1309 4 For purposes of § 1302 5, restaurants, fast food ~~restaurants~~ establishments, ~~delicatessens, carry-outs, and similar eating or drinking establishments and prepared food shops~~, shall be subject to the following limitations. these uses shall occupy no more than fifty percent (50%) of the linear street frontage within the ES Overlay District, as measured along the lots that face designated roadways in the ES Overlay District of which up to half (1/2) of the fifty percent (50%) of the linear street frontage shall only be occupied by fast food restaurants

(c) Section 1320, H Street Northeast Neighborhood Commercial Overlay District (HS) § 1320 4(c), is amended to read as follows

(c) Fast food ~~restaurant~~ **establishment** or food delivery service provided

7. Chapter 14, REED-COOKE OVERLAY DISTRICT, Section 1401, Use Provisions, § 1401 1 (c) is amended to read as follows

(c) Restaurant or fast food ~~restaurant~~ **establishment**.

8. Chapter 17, DOWNTOWN DEVELOPMENT OVERLAY DISTRICT, is amended as follows

(a) Subsection 1703.3(b) is amended to read as follows

1703.3 Each new or altered building that faces or abuts a public street shall devote all of the ground floor leasable space to the retail and service uses listed in § 1710 or the arts and arts-related uses listed in § 1711, provided:

(b) Not more than twenty percent (20%) of the required gross floor area on the ground floor shall be occupied by banks, loan offices, other financial institutions, travel agencies, or other transportation ticket offices, ~~delicatessens~~ **prepared food shops**, fast food ~~restaurants~~ **establishments**, printing or fast copy services, newsstands, dry cleaners, or any combination thereof,

(b) Subsections 1710 1 (v) and 1732 2 (ee), are amended by striking the phrase "fast food restaurant" where it appears and inserting the phrase "fast food establishment" in its place

9 Chapter 19, UPTOWN ARTS-MIXED USE (ARTS) OVERLAY DISTRICT, §1907 1 (o) (listing "delicatessen" as a preferred use) is repealed

10 CHAPTER 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, § 3104, Special Exceptions, is amended by adding the following to the list of special exceptions set forth in the table in § 3104.1.

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH THE CONDITIONS ARE SPECIFIED
Prepared food shop with greater than twelve seats for patrons	C-1, C-2-A	712

### **COMMUNITY COMMENT**

OP has worked with ANC 6A and 3C in reviewing the proposed language. Both groups are in general support of the concept of amending the definitions as proposed. OP has also worked with the Office of the Zoning Administrator and the staff of the Alcoholic Beverage Regulation Administration regarding the changes. Both agencies are in support of making changes to the existing definitions.

OP has sent the proposed amendment to the Restaurant Association of Metropolitan Washington (RAMW) and prior to the setdown report had two phone conversations with representatives about the changes. The RAMW representative promised to review the changes and forward any comments to OP and the Zoning Commission, but as of the date of this report, no comments have been received.

### **CONCLUSION**

The proposed text amendments are intended to provide clearer and more easily interpreted guidance on restaurants and other food service uses. The Office of Planning recommends that the proposed amendments to 11 DCMR (ZONING) be approved.

HT/tp