

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
"REWORKING OF" NOTICE OF PUBLIC HEARING (LINDSLEY WILLIAMS)

TIME AND PLACE:

Thursday, April 19, 2007, @ 6:30 P.M.
Office of Zoning Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

2007 APR 19 PM 1:01

D.C. OFFICE OF ZONING

RECEIVED

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 06-23 (Text Amendment – Eating Establishment Definitions)

THIS CASE IS OF INTEREST TO ALL ANCs

On May 12, 2006, Advisory Neighborhood Commission 6A petitioned the Zoning Commission to amend § 199 of the Zoning Regulations (Title 11, DCMR) to revise the definitions of "restaurants" and "fast food restaurants", and to make other amendments intended to better differentiate between the various types of eating establishment uses permitted in the District. The Zoning Commission set down the case for public hearing at its meeting of October 16, 2006. The Commission authorized the Office of Planning and the Office of the Attorney General to revise the text as needed to clarify the intent of the proposal. A somewhat revised text was shared with representatives of the Petitioner, who agreed with most of the modifications proposed.

The proposed text advertised in this notice would revise the definition of "restaurant", change the name of the "fast food restaurant" use to "fast food establishment", include criteria within the definition of "fast food establishment" that can be readily determined as being satisfied or not as part of the Zoning Administrator's review of building permit plans, and recognize a new use, to be called a "prepared food shop". The new use is intended to apply to establishments that offer seating or carrying out service and are principally devoted to the sale of: (1) prepared food (such as a sandwich shop); (2) non-alcoholic beverages (such as a coffee shop); or (3) refreshments (such as an ice cream parlor). The text proposes to define prepared food as "food that is assembled, but not cooked on the premises of a 'prepared food shop.'"

No change is proposed to the locations where restaurants and fast food restaurants are permitted. In most instances, prepared food shops will be permitted wherever restaurant are allowed, except that prepared food shops with seating for more than twelve patrons will require special exception approval in the C-1 and C-2-A zone districts.

The proposed text amendments to the Zoning Regulations (Title 11, DCMR) are as follows (**except for the proposed new definitions (paragraph 1)**, text added to existing provisions is shown in **bold and underline**; ~~deleted text is shown in strikethrough~~): **Further changes for discussion from the original hearing notice are shaded yellow, with bold additions and ~~additional text proposed for deletion in double strikethrough~~.** In addition, this "reworking" uses **bold font** for all existing and proposed defined terms.

ZONING COMMISSION
District of Columbia
ZONING COMMISSION
District of Columbia
CASE NO. 06-23
EXHIBIT NO. 18

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 **at least** 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 carryout 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 [??] **except as specified herein [??],** on the premises of a **prepared food shop**. This term includes such food items as sandwiches, wraps, and sushi. [??] **Foods may be kept warm or cooked to a limited extent if equipment needed for this is approved for use in the premises without specific fire-suppression or ventilation systems, e.g., soups or chili in a pot, a cheese or sauce warmer, or a rice cooker [??].**

Prepared food shop - a place of business that offers seating or carryout 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 **existing** 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 **production delivery** of **prepared food for delivery 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 **making delivering prepared food and then getting it to, arranging for getting it to, or turning it over to others who get it to**, off-site customers (**"delivery orders"**). Any establishment that derives more than seventy-five percent (75%) of its **transactions sales** from delivery orders will be considered a **food delivery service** in all **cases other than a**. ~~This definition does not include~~ catering establishments

Restaurant - a place of business ~~that, 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, with area for no more than** 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 area for 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:

[???] Repealing subsection 721.3 (r), which currently allows drive-ins.

(i) Subsection 721.3 (s) ~~(r)~~ 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 area for more 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 or drive-in [???];**

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; [???] or food delivery service [???]** *[This does not exclude prepared food shop.]*

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 leaseable 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

Proposed amendments to the Zoning Regulations of the District of Columbia are authorized pursuant to the Zoning Act of June 20, 1938, (52 Stat. 797); D.C. Official Code § 6-641.01 *et seq* (2001).

The public hearing on this case will be conducted as a rulemaking in accordance with the provisions of Section 3021 of the District of Columbia Municipal Regulations, Title 11, Zoning. Pursuant to that section, the Commission will impose time limits on testimony presented to it at the public hearing.

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information should be forwarded to the Secretary of the Zoning Commission, Office of Zoning, Suite 210, 441 4th Street, N.W., Washington, D.C., 20001. Please include the number of this particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

CAROL J. MITTEN, ANTHONY J. HOOD, GREGORY N. JEFFRIES, JOHN G. PARSONS, AND MICHAEL G. TURNBULL, ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY JERRILY R. KRESS, FAIA, DIRECTOR, AND BY SHARON SCHELLIN, SECRETARY TO THE ZONING COMMISSION.

Probable Omissions (in Chapters 13 and 18, NC and SEFC)

1302.5 Restaurants, prepared food shops, fast food restaurants establishments, and food delivery services delicatessens, carry-outs and similar eating or drinking establishments shall be subject to the following limitations:

(a) [Not affected]

(b) Except for a fast food restaurants establishment, such uses * * * *

1807.2 (fff) Restaurant, not including drive-in, and not including fast food establishment, prepared food shop or food delivery service.

Note that www.takeouttaxi.com is a food delivery service by its nature, but not as defined.

Finally, ensure that existing delicatessens and fast food restaurant Certificates of Occupancy will remain in effect and not result in the holders being treated as non-conforming uses as long as the property/business is unchanged, except ownership.