

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



June 14, 2007

Via E-Mail & U.S. Mail:

Patricia E. Gallagher, AICP
Executive Director
National Capital Planning Commission
401 9th Street, N.W., Suite 500
Washington, D.C. 20004

Re: Notice of Proposed Action: Z.C. Case No. 06-23 (Text Amendment – Eating Establishments)

Dear Ms. Gallagher

Please find attached a copy of the proposed rulemaking for the above-referenced case

The above proposed rulemakings will be published in the *D.C. Register* on June 22, 2007, for a 30-day comment period. The comment period will end on July 22, 2007. Accordingly, this case will be considered for final action at a special public meeting scheduled for July 30, 2007.

The proposed decision of the Commission to approve the above-mentioned cases are referred to the National Capital Planning Commission (NCPC) for review and comment, pursuant to the District of Columbia Home Rule Act of 1973, as amended, 87 Stat. 790, Pub. L. No. 93-198, D.C. Code Section 1-201 et seq.

If you have any questions, contact me at the Office of Zoning on (202) 727-0340

Sincerely,

A handwritten signature in black ink that reads "Sharon S. Schellin".

Sharon S. Schellin
Secretary to the Zoning Commission

cc David W. Levy (via e-mail)
Christine Saum (via e-mail)
Marjorie Marcus (via e-mail)

ZONING COMMISSION
District of Columbia
CASE NO. 06-23
EXHIBIT NO. 35

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING**

**Z.C. Case No. 06-23
(Text Amendment – 11 DCMR)
(Eating Establishments)**

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), hereby gives notice of its intent to amend sections 199, 601, 701, 704, 721, 733, 741, 742, 743, 752, 761, 801, 821, 901, 1302, 1307, 1309, 1320, 1401, 1703, 1710, 1732, 1807, 1907, and 3104 of the Zoning Regulations (Title 11 DCMR), and add a new section 712.

The proposed amendments will revise the definition of “restaurant”, change the name of the existing use “fast food restaurant” to “fast food establishment”, and revise the definition of “fast food establishment”. The amendments will also establish a new use, “prepared food shop”, that applies to establishments offering limited seating or carry out service and are principally devoted to the sale of prepared food, non-alcoholic beverages, or refreshments, and define “prepared food” as food that is assembled, but not heated by means other than microwave or toaster, 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 restaurants are allowed, but prepared food shops with 18 or more seats will require special exception approval in C-1 and C-2-A Zone Districts

Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the D C Register

The following rulemaking action is proposed

Title 11 DCMR is amended as follows. Added text is shown **bolded** and underlined, deleted text is shown in ~~strike through~~

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, other than a “prepared food shop,” where food is prepared 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. One characteristic that would satisfy this element would be building permit plans that 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 tableware. Characteristics that would satisfy this element include, but are not limited to: 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, grocery store, movie theater, or other use 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 heated by means other than microwave or toaster, on the premises of a prepared food shop.

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", "food delivery service", and "restaurant" 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 preparing food for delivery ~~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 that does not meet the definition of a “fast food establishment” or “prepared food shop.” where food, drinks or refreshments are prepared 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 no more than 18 seats for patrons and no drive-through.

(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 eighteen 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 provided that no drive-through shall be permitted.

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

- (i) Subsection 721 3(s) 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) Section 733, Fast Food Restaurants in C-2-A Districts is amended as follows

- (i) By striking the phrase “fast food restaurant” wherever it appears and inserting the phrase “fast food establishment” in its place

- (ii) By adding a new § 733.12 to read as follows

733 12 An applicant for special exception under this section may request the Board to modify the conditions enumerated in §§ 733 2 through 733 4, provided that the general purposes and intent of this section are complied with

- (f) Sections 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

- (g) Subsections 742 4, 752 4, and 761 6 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 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 1302 Designated and Restricted Uses, § 1302 5, is amended to read as follows:

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

- (b) 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

- (c) 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

- (d) 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

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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 18, SOUTHEAST FEDERAL CENTER OVERLAY DISTRICT, Section 1807 2 Preferred Uses, § 1807 2 (fff), is amended as follows

(fff) Restaurant, ~~not including drive-in or fast food~~,

10 Chapter 19, UPTOWN ARTS-MIXED USE (ARTS) OVERLAY DISTRICT, §1907 1 (o) is repealed

11 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.

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

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the D C Register. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D C. 20001. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**