

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



Z.C. CASE NO.: 06-23

As Secretary to the Commission, I hereby certify that on SEP 27 2007 copies of this Z.C. Order No. 06-23 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|---|
| 1. <i>D.C. Register</i> | 6. Office of Planning (Harriet Tregoning) |
| 2. Mr. Cody Rice
310 9 th Street, N.E.
Washington, D.C. 20002 | 7. DDOT (Ken Laden) |
| 3. All ANC's | 8. Zoning Administrator (Matt LeGrant) |
| 4. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 | 9. Jill Stern, Esq.
General Counsel - DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002 |
| 5. All Councilmembers | 10. Office of the Attorney General (Alan Bergstein) |

ATTESTED BY:

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

ZONING COMMISSION
District of Columbia

CASE NO. 06-27
EXHIBIT NO. 41

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



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

and

Z.C. ORDER NO. 06-23

Z.C. Case No. 06-23

(Text Amendments – 11 DCMR)

(Eating Establishment Definitions)

July 30, 2007

The Zoning Commission for the District of Columbia (the “Commission”), 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 and referred the proposed amendments to the National Capital Planning Commission (“NCPC”) for a 30-day period of review pursuant to § 492 of the District of Columbia Charter, hereby gives notice of the adoption of amendments to Chapters 1, 6, 7, 8, 9, 13, 14, 17, 18, 19, and 31 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“DCMR”)). The amendments 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.”

A Notice of Proposed Rulemaking was published in the *D C Register* (“DCR”) on June 22, 2007, at 54 DCR 6093 for a 30-day notice and comment period.

The Commission took final action to adopt the amendments at a public meeting held on July 30, 2007.

This final rulemaking is effective upon publication in the *D C Register*.

Existing Regulations

Since 1986, the Zoning Regulations have distinguished between restaurants and fast food restaurants by defining “restaurant” and “restaurant, fast food” separately, and treating the fast food use more restrictively. 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 current means of distinguishing fast food restaurants has largely become outdated. The definitions distinguish “restaurants” from “restaurants, fast food” by means of calculations in the fast food definition regarding queuing area, pre-prepared food, and disposable tableware. The ever-evolving business model in the restaurant industry allows for increasing flexibility in layout, service style, and food preparation. This has led to cases where establishments considered fast food restaurants by the Advisory Neighborhood Commission (“ANC”) were granted matter-of-right approval in the C-2-A District by the Department of Consumer and Regulatory Affairs (“DCRA”) because they did not fall within the existing definition of “restaurant, fast food.”

Description of Text Amendments

The proposed amendments would revise the definition of “restaurant,” change the name of the “restaurant, fast food” 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, called a “prepared food shop.”

Relationship to the Comprehensive Plan

The amendments are not inconsistent with the goals of the District Elements of the Comprehensive Plan for the National Capital and are consistent with §§ LU 2 3-A and LU 2 4 B which advocate changing the Zoning Regulations to better govern commercial uses and protect residential neighborhoods. The proposed changes further the goals of comprehensive plan by providing clarity in land use designations and facilitating easier enforceability in the regulations.

Public Hearing and Proposed Action

This rulemaking was initiated by petition filed by ANC 6A dated May 12, 2006 that included suggested text. The Commission set down the case for public hearing at its meeting of October 16, 2006, and authorized the Office of Planning (“OP”) 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 Commission held a public hearing on April 19, 2007. At this meeting, several parties suggested various changes to the text, including changes to the definitions of “fast food establishment” and “prepared food shop.” The Commission requested OP to compile and address all of the written and oral comments prior to proposed action. In a report dated May 23, 2007, OP addressed 13 separate comments on the advertised text and made several minor changes to address them. These changes include removal of the term “cooking,” increase in the number of seats allowed in a matter-of-right prepared food shop, and provide flexibility in the special exception provisions for fast food establishments.

The Commission took proposed action on June 11, 2007 to approve the text as amended in the Office of Planning supplemental report. A Notice of Proposed Rulemaking was published in the *D C Register* on June 22, 2007, at 54 DCR 6093, for a 30-day notice and comment period.

No comments were received.

The proposed rulemaking was also referred to the NCPC pursuant to § 492 of the District of Columbia Charter. NCPC, by report dated June 29, 2007, found that the proposed text amendments would not adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan.

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency.

Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on July 30, 2007. The Commission supports the amendments proposed by OP to address public comments on the advertised text.

The Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to the Zoning Regulations, Title 11 DCMR. Added wording is in **bold** and underlined, and deleted wording is shown in ~~strike through~~ lettering, except for Part D, which is all new text and therefore not annotated.

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" 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 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~~ **establishments**.

- (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
- 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

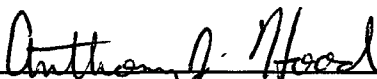
- 11 CHAPTER 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, § 3104, Special Exceptions, is amended by adding the following to the list of special exceptions set forth in the table in § 3104 1

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

Vote of the Zoning Commission taken at its public meeting on June 11, 2007, to **APPROVE** the proposed rulemaking. **4-0-1** (Anthony J Hood, John G Parsons, Michael G Turnbull, and Gregory N Jefferies in favor, Carol J Mitten, having not participated, not voting)

This Order was **ADOPTED** by the Zoning Commission at its public meeting on July 30, 2007, by a vote of **4-0-1** (Anthony J Hood, Gregory N. Jefferies, John G. Parsons, and Michael G. Turnbull to adopt, Carol J Mitten, having not participated, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D C Register*, that is, on **SEP 28 2007**



ANTHONY J. HOOD
Vice Chairman
Zoning Commission



JERRILY R. KRESS, FAIA
Director
Office of Zoning 

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

and

Z.C. ORDER NO. 06-23

Z.C. Case No. 06-23

(Text Amendments – 11 DCMR)

(Eating Establishment Definitions)

The full text of this Zoning Commission order is published in the “Final Rulemaking” section of this edition of the *D C Register*