

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF PLANNING



Office of the Director

**MEMORANDUM**

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

**FROM:** Ellen M. McCarthy  
Director

**DATE** *EM* October 6, 2006

**SUBJECT:** Report for **Setdown** for Text Amendments to change eating establishment definitions, initiated by ANC 6A.

#06-23

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This report serves as the Prehearing Filing required by 11 DCMR § 3013 as a prerequisite to the advertisement of this proposed text amendment

**RECOMMENDATION**

The Office of Planning recommends the following action be set down for hearing

That the Zoning Commission adopt the following text amendments

- a The amended definition of Restaurant,
- b Amended definition of Fast Food Restaurant,
- c Addition of a definition for Delicatessen and Coffee Shop, and
- d Amendment to §701.1 to include Delicatessen and Coffee Shop

**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The existing language for differentiating between "restaurant" and "fast food restaurant" has largely become outdated.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.

ZONING COMMISSION  
District of Columbia

CASE NO. 06-23  
EXHIBIT NO. 6

## PROPOSAL

The ANC has proposed changing the definition of both Restaurant and Fast Food Restaurant to provide more informative descriptions including characteristics of both types and exceptions for each. The proposal would eliminate the existing wording in its entirety and replace it with language that has been amalgamated from a variety of zoning codes from around the country. The definition for each has three sections: General Definition, Characteristics, and Exceptions/Exclusions. The ANC proposal also adds new definitions for delicatessen and coffee shop. OP proposes including these two new uses in the list of matter-of-right uses for the C-1 district.

### Proposed Text:

#### *1. Amend definition of "Restaurant" §199.1 as follows:*

~~Restaurant - a place of business where food, drinks, or refreshments are prepared and sold to customers primarily for consumption on the premises. This term shall include but not be limited to an establishment known as a cafe, lunch counter, cafeteria, or other similar business, but shall not include a fast food restaurant. In a restaurant, any facilities for carryout shall be clearly subordinate to the principal use providing prepared foods for consumption on the premises.~~

(a) General definition. A "restaurant" is a place of business that prepares and serves food or beverages on nondisposable plates and containers with nondisposable eating utensils to seated customers. A restaurant is designed and operated so that its customers consume the food or beverages while seated at tables or counters on the premises. A restaurant shall include but not be limited to an establishment known as a café, lunch counter, or other similar business. A restaurant may provide carryout service as an accessory use without being deemed a fast food restaurant only if its carryout facilities are clearly subordinate to its primary use as a restaurant. A restaurant shall not include a fast food restaurant.

(b) Characteristics. A restaurant will generally have the following characteristics:

(1) A restaurant employee serves food and beverage items at the same table or counter at which customers order and consume said items;

(2) The establishment provides an individual printed menu to each customer;

(3) The establishment does not provide trash receptacles in or around seating or queuing areas for disposal of trash by customers, and

(4) The establishment requires payment only after consumption

(c) Exceptions. Notwithstanding other provisions of this definition, a restaurant shall include a cafeteria where food or beverages for consumption on premises are served exclusively on nondisposable plates and containers with nondisposable eating utensils as

well as any carryout facilities that are clearly subordinate to their primary use as a restaurant

***2. Amend definition of "Restaurant, Fast Food" §199.1 as follows:***

~~Restaurant, fast food - a place of business devoted to the preparation and retail sale of ready-to-consume food or beverages for consumption on or off the premises. A restaurant will be considered a fast food restaurant if it has a drive-through. A restaurant will be considered a fast food restaurant if the floor space allocated and used for customer queuing for self service for carry out and on premises consumption is greater than ten percent (10%) of the total floor space on any one (1) floor that is accessible to the public, and it exhibits one (1) of the two (2) following characteristics:~~

- ~~(a) At least sixty percent (60%) of the food items are already prepared or packaged before the customer places an order; and/or~~  
~~(b) The establishment primarily serves its food and beverages in disposable containers and provides disposable tableware. (This definition does not include an establishment known as a retail grocery store, convenience store, ice cream parlor, delicatessen, or other business selling food or beverages as an accessory use or for off premises preparation and consumption)~~

(a) General Definition. A "fast food restaurant" is a place of business devoted to the preparation and retail sale of ready-to-consume or quickly-prepared food or beverages for consumption on or off the premises.

(b) Characteristics. An establishment shall be a fast food restaurant if it has any one or more of the following characteristics

(1) Customer orders are taken solely from a service window or a walk-up service counter that lacks fixed customer seating,

(2) It presents food or beverages solely on one or more printed signs, placards, posters, or boards that are permanently affixed in conspicuous places in the building;

(3) It provides one or more trash receptacles within the building for customers to deposit the disposable packaging in which the establishment provides its food or beverages;

(4) It has a drive-through;

(5) It customarily serves its food or beverages in disposable containers and provides disposable tableware; and/or

(6) Facilities for carryout service are not clearly subordinate to facilities for on premises consumption.

**(c) Exclusions A fast food restaurant shall not include**

**(1) any establishment that sells food or beverages either only as an accessory use or only for preparation and consumption off the premises, such as a grocery store, convenience store or delicatessen.**

**(2) a coffee shop or ice cream parlor, provided that any other use is clearly subordinate to this primary use.**

***3. Add definition of “Delicatessen” §199.1 as follows:***

**Delicatessen – a place of business devoted to the retail sale of meats, cheeses, and other food items by weight for off-premises preparation and consumption. A delicatessen may also sell food or beverages for consumption on or off premises as an accessory use. A delicatessen is not a restaurant or a fast food restaurant.**

***4. Add definition of “Coffee Shop” §199.1 as follows:***

**Coffee Shop – a place of business devoted to the retail sale of coffee, tea, and other nonalcoholic beverages for consumption on or off the premises, which may also include the sale of a limited number of food items as an accessory use. A coffee shop is not a restaurant or fast food restaurant.**

***5. Add §701.1(s) to matter of right uses in C-1 as follows:***

(s) Delicatessen

***6. Add §701.1(t) to matter of right uses in SP-1 as follows:***

(t) Coffee Shop

**ANALYSIS**

The text proposed by the ANC provides increased clarity and nuance over the existing definition. It removes the present difficulty of calculating “queuing area” and offers clearer guidelines for both applicants and DCRA to determine which category applies to a particular establishment. Overall, the proposed changes will minimize ambiguity in the two definitions.

The main weakness in both the existing and proposed versions of the definitions is that they rely heavily on operational standards that are difficult to ascertain at the time of building permit review. Conversations with the office of the Zoning Administrator have stressed the need for physical characteristics that can be ascertained from building plans in order to provide meaningful decision making criteria before a new use is constructed or occupied. However, OP has reviewed the extensive research of the ANC and come to the conclusion that the majority of factors in differentiating these two uses are necessarily operational.

OP also agrees with the necessity to create definitions for the related uses of delicatessen and coffee shop. In both cases, they are listed as matter-of-right uses for certain zoning districts while no underlying definition exists. The creation of these definitions will eliminate this inconsistency and provide guidance on the differences between these and other restaurant uses. OP notes the need for further consideration of where the line is drawn between these uses and the restaurant uses. For example, in this definition a delicatessen becomes a restaurant (or fast food restaurant) when the primary use switches from sale for "preparation and consumption" to primarily sale for immediate consumption, but it is difficult to ascertain how and where this line is drawn.

This issue highlights the need for a broader amendment dealing with primary and accessory uses, especially when multiple commercial uses share a space. Right now, there appears to be no guidance whether a delicatessen or fast food restaurant accessory to a grocery store, for example, would need a separate zoning approval and certificate of occupancy. OP will continue to examine additional wording clarifications.

OP believes that the text proposed by the ANC is sufficient to serve as a conceptual basis for setdown and advertisement. However, in addition to the issues raised above, discussions with the Office of the Attorney General have identified areas where the text needs further refinement. Among the issues identified by OAG for change are:

1. The definitions for "restaurant" and "fast food restaurant" need to be made clearly exclusive of each other.
2. The definition of restaurant includes a provision permitting carry out food service as an accessory use. Provisions permitting accessory uses belong in the text of the Zoning Regulations, not the definitions.
3. The definition of restaurants includes a "café, lunch counter, or other similar business." These terms are vague and undefined.
4. The proposed text removes "cafeteria" from the "general definition" of "restaurant," then puts it back in as an "exception." This is confusing.
5. "Cafeteria" is undefined.
6. "Restaurant" and "Delicatessen" are used by DCRA as business license classifications, with their own definitions. We should at least try to harmonize the zoning definitions with the business license definitions.

Working with the applicant, OP and OAG will collaborate to prepare a revised text for the Commission's consideration at the hearing that addresses these issues.

### **COMMUNITY COMMENT**

OP has worked with ANCs 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.

In mid-August OP sent the proposed amendment to the Restaurant Association of Metropolitan Washington (RAMW) and 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 set down and advertised for hearing.

EM/tp