



COUNCIL OF THE DISTRICT OF COLUMBIA
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004

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ZONING COMMISSION

September 29, 2008 District of Columbia

CASE NO. 08-20

TESTIMONY OF PHIL MENDELSON EXHIBIT NO. 10

Re. Case No. 08-20

Text Amendments – Firearms and Firearm Retail Sales Establishment

I am Phil Mendelson, an At-Large member of the Council of the District of Columbia. I am testifying in this case because of my role as Chairman of the Council’s Committee on Public Safety and the Judiciary. As chair of this committee I am responsible for understanding the implications of the recent Supreme Court Case (*Heller v. District of Columbia*), and for drafting legislation revising the gun control laws in the District.

I am concerned about the proposed text amendments for two reasons. First, they are unduly restrictive. Second, they invite challenge either in the courts or, more likely, by Congress. To give you context: on September 17th the U.S. House of Representatives adopted by a 266-152 vote a bill to rescind the District’s authority to legislate *any* gun control. The “Findings” in that bill included such statements as:

- “The law-abiding citizens of the District of Columbia are deprived by local laws of handguns, rifles, and shotguns that are commonly kept by law-abiding persons throughout the United States for sporting use and for lawful defense of their persons, homes, businesses, and families.”
- “Officials of the District of Columbia have indicated their intention to continue to unduly restrict lawful firearm possession and use by citizens of the District.”

The House bill passed notwithstanding the fact that one day earlier the Council had adopted, and Mayor Fenty had enacted, legislation addressing the very specific concerns being voiced by constituents as well as members of Congress.

Response to the Supreme Court Decision

I have observed two types of response to the Supreme Court’s June 26th decision: First, handguns are legal, let’s find the best regulation that promotes public safety. This is the direction in which the Council has moved. The second response is to give as little ground as possible – limit how many guns may be registered, make it burdensome and expensive, limit the purpose of registration (i.e., for self defense, but not recreation or practice), unduly restrict gun dealers, and so forth.

Gun dealers are a critical component of gun control. They are critical to the District’s law, because citizens may acquire or transfer firearms only through licensed gun dealers. They are critical to our neighboring states, because D.C. guns used in crimes in those states are more easily traced if

there are licensed District gun dealers – dealers who are required to keep records under our law as a condition of their license. Dealers are critical to federal gun control, because handguns may be purchased interstate only through gun dealers located in the purchaser's state of residence.

In short, we do not want to limit gun dealers, we want them. We want them as critical players in our gun control law.

The Proposed Text Amendments

The Office of Planning's July 25th set-down report noted that the proposed regulations are based on the "existing zoning regulations pertaining to sexually oriented businesses, which are also limited by special exception to the downtown area, and which have similar proximity requirements." This comparison is unwarranted.

First, I am unaware of any research showing that a regulated gun dealer is a nuisance in any way that comes close to a sexually oriented business. I am unaware that gun dealers attract loitering or the pandering of sex. I am unaware of a statistical analysis showing that gun dealers attract a higher incidence of crime, e.g., theft, robbery, and prostitution – or shootings.

Second, you must ask what aspect(s) of a gun dealer pose a problem for the community in which the dealer locates. The only answer I come up with is security. This problem is not locational. What I mean is that the text amendments should address security. Restricting gun dealers by zone district is something else – it has little or nothing to do with security.

The Office of Planning analysis does not mention any concerns or problems other than security.

Third, I find the Office of Planning's examination of regulations from other U.S. municipalities troubling. It is very limited. It omits several large cities which I would want to compare – e.g., Boston, New York, Chicago, Los Angeles, San Francisco (but it does include Culver City, California). It also includes no analysis of each municipality's gun control laws, so there is no understanding of (or ability to compare) the legal restrictions on gun ownership which the zoning regulations supplement.

Fourth, you should be aware of past practice in the District of Columbia. Research by my staff earlier today found that in 1972 (three years before Council consideration of our gun control law subject to *Heller*) there were 10 gun dealers in the District. They were not limited to the high density downtown commercial districts. There was a dealer at 18th and Adams Mill Road, others at 5201 Georgia Avenue, NW, 1812 R Street, NW, 3172 Bladensburg Road, NE, and 2747 Martin Luther King Jr. Blvd. SE.

My office looked at the phone directories for five years dating back to 1943. It is clear that the 1958 zoning regulations did not perceive gun dealers as a nuisance, or as a special use that should be limited to the highest density commercial districts. Rather, it appears gun dealers have always been permitted as of right in moderate and medium density commercial districts.

Finally, you should know that the District's current gun control law prohibits the "display of any firearm or ammunition in windows visible from a street or sidewalk," and, further, requires that all firearms "be kept at all times in a securely locked place affixed to the premises." Moreover, our law requires at least 48 hours to purchase a firearm, so nobody can walk into a gun store and expect to walk out minutes later with a gun. However, this fall the Council will be adopting permanent amendments to this law, utilizing best practices from other jurisdictions regarding gun dealers. While the Zoning Commission ought to consider security as it moves forward with text amendments, please understand that much is being done by others regarding this issue.

Recommendation

Attached to my testimony are detailed recommendations for the text. A summary of my recommendations is:

- Prohibit firearms sales in the C-1 and C-2-A zone district;
- Permit firearms sales, under a special exception, in C-2-B through C-3-A zone districts;
- The primary focus of the special exception should be security-related issues;
- Permit firearms sales as a matter of right in the C-3-B zone district and above;
- Limit the firearms restriction in connection to home occupations by limiting the actual, physical sale of firearms; and
- Reduce the 600' set off being proposed.



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September 29, 2008

TECHNICAL COMMENTS: CASE NO. 08-20
Text Amendments – Firearms and Firearm Retail Sales Establishment

I want to urge caution in establishing criteria for the placement of Firearms Retail Sales Establishments and Firearms Dealers. Unlike each of the communities that the Office of Planning (OP) studied, the District of Columbia is under intense scrutiny from Congress. I strongly advise against taking any action that will invite measures that would undermine the Zoning Commission's and the Council's ability to make the laws that govern our city.

Definitions

First, defining the term Firearms Retail Sales Establishment is a critical step in confirming the legitimacy of these places to exist as a permitted use. However, you define a Firearms Dealer as a *person* in Section 199, but then try and prohibit it as a *use* under Section 203.9 (Home Occupations). Moreover, you should not prohibit the use, only the actual, physical transfer of a firearm. A Firearms Dealer who is not operating a Firearms Retail Sales Establishment (is not physically handling guns) is really only running an office, which I don't think you can legitimately seek to control more strictly than any other office use. On that account, it is not clear to me what you gain by defining Firearms Dealer; it appears unnecessary.

Special Exception Criteria

As proposed by OP, the opening of any Firearms Retail Sales Establishment would be permitted only after approval by the Board of Zoning Adjustment (BZA) as a Special Exception. In addition to the Special Exception evaluation standards contained in Section 3104, there would be proximity restrictions and limitations on display of firearms and ammunition.

As you know, the evaluation criteria in Section 3104 are broad. In order to qualify the use must be judged by the BZA to "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property..." In light of the presumption of compatibility that exists for special exception uses, I wonder what types of conditions the Commission might envision the BZA placing on a Firearms Retail Sales Establishment that are related directly to the sale of weapons or ammunition. In reviewing Table 1 of the OP report, it appears that the only conditions that the BZA could legitimately place on these establishments would relate to security (since gun dealers seem less likely to generate noise, odor, trash, traffic, etc. than most other types of retail use).

In order not to be overly prescriptive then, would it not be preferable to outline those physical security requirements that are appropriate and establish them as matter-of-right criteria – not unlike the very specific requirements for locating an animal shelter in an Industrial Zone District?

Zones Where Firearms Retail Sales Establishments are Permitted

In addition to creating, in at least some zone districts, the potential for Firearms Retail Sales Establishments to be located as a matter-of-right, I suggest that the Commission revisit the progression of Commercial Districts (from C-1 through C-5) and broaden the number of zones in which Firearms Retail Sales Establishments can locate. If the Commission looks at the types of uses permitted in C-1, you will see that they are intended to cater to a very localized clientele. In C-2-A, the list of permitted uses is expanded considerably, although some with the potential for adverse impacts are permitted by Special Exception. In making the transition from the C-2 zones to C-3-A and above, rather than adding significantly to the list of permitted uses, certain uses that are permitted by Special Exception only in the C-2 zones become a matter-of-right in C-3-A, -B, and -C. I would recommend a similar progression for Firearms Retail Sales Establishments.

The argument for limiting these establishments to the most intense commercial districts (especially when equated to the locational restrictions on sexually-oriented businesses) is that they are less likely to be proximate to residential and mixed-uses. However, the proposed proximity limitations already address that concern in a more effective way without being overly restrictive.

Therefore, I specifically suggest that Firearms Retail Sales Establishments be prohibited in the C-1 and C-2-A Districts, be permitted by Special Exception in the C-2-B through C-3-A Zone Districts, and be permitted as a matter-of-right in the C-3-B Zone District and above (and, by extension, the Industrial Zone Districts). In all cases where the use is permitted, the proposed proximity restrictions and display limitations should apply, in addition to specific physical security requirements that OP could recommend.

Locational Restrictions

The table in the OP report notes that Baltimore has a 100 yard separation of gun sales from parks, churches, schools, etc., Detroit and Denver have no such minimum distance requirement, while Minneapolis and Pittsburgh require a 500' set-off. The proposed text amendments, however, require 600 feet "R" and "SP" Districts, as well as 600 feet from churches, schools, libraries, and playgrounds. Notably, none of these cities have the strict degree of gun control that exists in the District.

Given D.C. law and the security requirements you should write into the regulations, the Commission should reduce the set-off from being proposed by the Office of Planning.

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Memorandum

To: Councilmember Phil Mendelson
From: Michael Battle
Date: September 29, 2008
Subject: Gun Dealers in District 1965/1972

**1965 Gun Dealers
Northwest**

- | | |
|------------------------------|-------------------------------|
| 1. Atlas Sports Store | 800 E St. NW |
| 2. Consolidated Armaments | 1420 New York Avenue, N.W. |
| 3. Irving Sports Shops | 10 th and E St. NW |
| 4. Phillips Police Equipment | 525 6 th St. NW |
| 5. Sportsmen's Den | 3256 Prospect NW |
| 6. Tendler's Sales Company | 913 D St. NW |

**1972 Gun Dealers
Northwest**

- | | |
|----------------------------------|-------------------------------|
| 1. All Awards by Romar* | 1806 Adams Mill Rd. NW |
| 2. Atlas Sports Store | 800 E St. NW |
| 3. Crawford International* | 5201 Georgia Ave. NW |
| 4. Crown Pawnbrokers | 1726 14 th St. NW |
| 5. Federal Services | 1518 K St. NW |
| 6. International Police Services | 1812 R St. NW |
| 7. Irving Sports Shops | 10 th and E St. NW |
| 8. Livingston and Company | 1423 H St. NW |

Northeast

- | | |
|------------------------|-------------------------|
| 9. Irving Sports Shops | 3172 Bladensburg Rd. NE |
|------------------------|-------------------------|

Southeast

- | | |
|---------------------|----------------------|
| 10. Saveway Surplus | 2747 Nichols Ave. SE |
|---------------------|----------------------|

* name given is one of two gun store names for this location