

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING



MEMORANDUM

TO: Zoning Commission for the District of Columbia

FROM: Jennifer Steingasser, Deputy Director

DATE: November 14, 2008

SUBJECT: Supplemental Public Hearing Report for Zoning Commission Case 08-20 - Text Amendments to the Zoning Regulations to regulate firearms retail sales establishments, initiated by the Office of Planning.

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I. RECOMMENDATION

The Office of Planning recommends the Zoning Commission **take proposed action to approve and emergency action to adopt** the following text amendments to the Zoning Regulations:

- a. Amendment to Chapter 1 (Definitions) §199 to add a definition of firearms and firearms retail sales establishment;
- b. Amendment to Chapter 2 (R-1 Residence District) §203.9 (Home Occupation) to add firearms retail sales establishment to the list of prohibited uses;
- c. Amendment to Chapter 7 (Commercial Districts) to do the following:
 - i. permit firearm retail sales establishments as a permitted use in the C-2-A through C-5 Commercial Districts and establish specific requirements regulating the location of firearm retail sales establishments within these zones
 - ii. prohibit firearm retail sales establishments as a principal or accessory use within the C1 Commercial District
- d. Amendment to Chapter 8 (Industrial Districts) to permit firearm retail sales establishments as a permitted use in the C-M-1, C-M-2, and M districts and establish specific requirements regulating the location of firearm retail sales establishments within these zones
- e. Amendments to Chapters 5 (Special Purpose Districts), 6 (Mixed Use Commercial – Residential District), and 9 (Waterfront Districts) to clarify that the firearms retail sales establishment use is not permitted as a principal or accessory use in these zones.

II. BACKGROUND

At its July 28, 2008 public meeting, the Zoning Commission took emergency action and set down for public hearing text amendments to allow for the regulation of firearms retail sales establishments. The Commission also authorized the publication of a notice of proposed

ZONING COMMISSION
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EXHIBIT NO. 16

rulemaking. As a result, a Notice of Emergency and Proposed Rulemaking and a Notice of Public Hearing were published in the August 8, 2008 edition of the *D.C. Register*. The emergency rule will expire on November 25, 2008.

The proposed and emergency rule would have only permitted a Firearms Retail Establishment as a special exception. The use would first be permitted in a C-3-C zone. In addition, several requirements and restrictions were placed upon the use, including that no portion of the establishment could be located within six hundred feet (600 ft.) of a church, school, library, or playground or from a residence or special purpose district.

On September 18, 2008, the Zoning Commission held the public hearing for this case, heard testimony from interested parties, and requested additional information from the Office of Planning prior to decision making.

III. MODIFICATIONS FROM THE PUBLIC HEARING

There are several changes to the proposed text from what was presented at the public hearing and the original emergency text amendment. After the public hearing, the Office of Planning staff has continued to work with staff from the Metropolitan Police Department (MPD) and Office of the Attorney General (OAG) on this issue. As a result, we have become better informed about the logistics of a firearms purchase as well as the gun license and registration process. We found that many of the safety and security measures we were attempting to implement via the special exception process were being addressed elsewhere.

The major changes to the advertized text include allowing firearms sales within a larger number of zoning districts than initially proposed, allowing the sales as a matter-of-right use rather than by special exception, and reducing the location restriction from 600' to 300'. The table below summarizes the changes to the regulations since the public hearing.

	Type of Use	Zoning Districts Allowing Firearm Retail Sales	Location Restriction
Advertized Proposed text	Special Exception	C-3-C, C4, C5	600' from schools, libraries, churches, playgrounds, residential districts
Current Proposal	Matter-of-Right	C-2-A, C-2-B, C-2-C, C-3-A, C-3-B, C-3-C, C4, C5, C-M-1, C-M-2, M	300' from schools, libraries, churches, playgrounds, residential districts

IV. PROPOSED TEXT

The Office of Planning (OP) recommends that the Zoning Commission take proposed action to approve and emergency action to adopt the following text amendment to DCMR, Title 11 (The Zoning Regulations) with all new text shown in **bold**. Text that has been added since the initial setdown is shown in **bold, underlined text**.

1. Amend Chapter 1 Definitions §199 by adding the following definitions:

Firearm: a gun, pistol, or any weapon capable of firing a projectile and using an explosive charge as a propellant.

Firearms retail sales establishment: an establishment engaged in the sale, lease, or purchase of firearms or ammunition. If an establishment is a firearms retail sales establishment as defined here, it shall not be deemed to constitute any other use permitted under the authority of this title.

2. Amend Chapter 2 R-1 Residence District Use Regulations §203.9 (Home Occupation) by adding the following as a prohibited use:

(c) Firearms retail sales establishment.

3. Amend Chapter 5 Special Purpose Districts §502.7 Accessory Uses as follows:

502.7 Any other accessory use and accessory building customarily incidental to the uses otherwise authorized by this chapter shall be permitted in an SP District, **except that a firearms retail sales establishment shall not be permitted.**

4. Amend Chapter 6 Mixed Use (Commercial Residential) District §602 Prohibited Uses by adding the following:

602.1 (r) Firearms retail sales establishments as a principal or accessory use.

5. Amend Chapter 7 Commercial (C) District §702.4 C-1 Accessory Uses as follows:

702.4 Other accessory uses customarily incidental and subordinate to the uses permitted in C-1 Districts shall be permitted in a C-1 District, **except that a firearms retail sales establishment shall not be permitted as an accessory use.**

6. Amend Chapter 7 Commercial (C) District § 721 Uses As of Right (C2), by adding the following subsection:

721.3 (u) (Firearms retail sales establishments, provided:

- i. No portion of the establishment shall be located within three hundred feet (300 ft.) of a Residence (R) or Special Purpose (SP) District.**
- ii. No portion of the establishment shall be located within three hundred feet (300 ft.) of a church, school, library, or playground.**

7. Amend Chapter 9 Waterfront Districts §901.2 Uses as a Matter of Right (W) as follows:

901.2 Accessory use (including parking), building, or structure customarily incidental and subordinate to the principal uses permitted in § 901.1 shall be permitted in a Waterfront District as a matter of right, **except that a firearms retail sales establishment shall not be permitted as an accessory use.**

8. Amend Chapter 9 Waterfront Districts §902.1 Prohibited Uses as follows:

902.1 (r) Firearms Retail Sales Establishment.

V. ANALYSIS

A. Merits of the proposed rule as revised.

The purpose of this text amendment is to further refine proposed regulations pertaining to the location of firearms retail sales establishments as both principal and accessory uses.

The proposal has been revised to allow firearm retail sales establishments within several commercial and industrial zoning districts. They include the following: C-2-A through C-3-C, C-4, C-5, CM-1 CM-2, and M. A map showing the location of these districts is attached (Exhibit 1). The proposed regulations also establish location restrictions based on the proximity to certain other uses. The retail sale of firearms would also be permitted as an accessory use, subject to the same set criteria, in these zones. Additional text amendments note where firearm retail sales establishments are prohibited. A map showing the permitted locations for firearm retail sales establishments is also attached (Exhibit 2).

The proposed regulations are based on a combination of:

- other District laws pertaining to firearms;
- existing zoning regulations, which also limit the location of certain uses by proximity requirements;
- a study of other cities which regulate this use; and
- an analysis of the existing federal and District laws which regulate the issuance of firearms licenses.

Prior to the proposed text amendment, the retail sale of firearms was permitted as-of-right in all districts that allowed retail uses, beginning with C-1 Commercial. Such uses were classified as general retail uses and not subject to special review or requirements. The emergency text amendment, adopted in July 2008, placed additional restrictions on the location of gun stores. Since its adoption, the Office of Planning has continued to study this issue and coordinated our work with the efforts of other District agencies like the MPD and OAG. We have also received and reviewed citizen comment from a variety of groups including ANC's, District agencies, concerned residents, and interest groups. As a result, we have made several changes to the proposed text in response to their concerns and to ensure that the regulations are compliant with the recent Supreme Court ruling.

Previous and Current Rationale

The emergency text amendment was largely based on the approval process in place for sexually oriented business establishments (SOBE). SOBEs are only permitted by special exception within the high-density commercial districts and are subject to specific location criteria. While the emergency text amendment continued to allow gun stores in the District, they included a special exception review process for approval. The intent of this restriction was to avoid the creation of non-conforming uses while the temporary regulations were in effect, if the final action resulted in a more restrictive policy than the initial proposal. The current text amendment would provide more opportunities for the retail sale of firearms and in a wider range of locations than initially proposed. The changes include allowing the

establishment of gun stores as a matter-of-right use and reducing the location restriction from uses like schools and playgrounds from 600' to 300'.

The Office of Planning recommends that the permanent text allow firearm retail sales establishments beginning in the C-2-A zone district. We felt it was inappropriate to allow such uses in the C-1 district due to the intent and character of such zones. The C-1 district is designed to be a neighborhood shopping district "to provide convenient retail and personal service establishments for the day-to-day needs of a small tributary area, with a minimum impact upon surrounding residential development" (§ 700.1). The C-2 districts, called Community Business Center Districts, are designed "to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core" (§710.2). Because firearms retail sales establishments would likely draw customers from a wider service area it was determined that the C-2 zone was the appropriate zone to introduce the use.

Reduce Radius Restriction

OP is also recommending a reduction in the advertized radius restriction for firearms retail sales establishments from 600' to 300' from schools, churches, libraries, and playgrounds. While the Office of Planning recognizes that the process for obtaining a gun would not allow for potential gun owners to enter a store and leave with a firearm in the same trip, we find that the separation of such uses from those typically associated with residential uses or uses characterized by the presence of children and large groups has value for the protection of these groups. OP recommends lessening the location restriction to protect these uses from the potential for an adverse impact on safety and security without being overly prohibitive for those wishing to establish retail stores that sell firearms.

Matter-of-Right Use

The advertized text proposed that firearms retail sales establishments be approved by special exception, which would include a public hearing at the Board of Zoning Appeals. The proposed special exception criteria was aimed at providing measures to ensure the safety and security of the premises where guns would be stored and the protection of nearby areas. After additional discussions with MPD, it was concluded that the proposed criteria were already addressed by MPD and the Bureau of Alcohol, Tobacco and Firearms (ATF) as part of their licensing and registration procedures, including the prohibition on window displays of ammunition and the provision of security and safety measures. Additionally MPD expressed concerns about the advertized requirement to locate gun stores on the ground floor due to the possibility of theft.

As a result, OP and OAG concluded that the requirement for a special exception was an unnecessary administrative step and duplicative of much of the comprehensive licensing processes of both the ATF and MPD prior to obtaining a business license. OP feels comfortable that the safety and security concerns will be adequately addressed as a part of this review and therefore recommends that firearm retail sales establishments be allowed as a matter-of-right use.

Parking

OP does not recommend any new parking requirement specifically for firearms retail sales establishments. Current regulations require retail uses to provide parking in relationship to the total floor area of the use. This ratio ranges from one space per 300 square feet to one space

per 3,000 square feet, depending on the district. In addition, in most districts, uses less than 3,000 square feet in size are exempt from a parking requirement. Such parking requirements would apply to a retail store for firearms. In addition, the current firearms license and registration policy does not require licensed gun owners to transport firearms in a vehicle.

Firing Ranges

Several questions have been raised about the possibility of establishing a firing range in the City. In addition, references have been made to the term “shooting gallery”, a use first introduced in the C-3-A district (§741.2 (a)), in comparing it to a firing range. The historical interpretation of a shooting galley has not applied to a firing range but instead to recreational activities typically found within amusement park:

741.2 In addition to the uses permitted in C-2 Districts by § 721.1, the following service establishments shall be permitted in a C-3 District as a matter of right:

(a) Amusement enterprise, including penny arcade or *shooting gallery*;

Under the current regulations, firing ranges would be a permitted use in the M District. Since firing ranges are not explicitly addressed or defined elsewhere, they would be allowed in the M zone by §821.3, which lists “[A]ny other lawful use not regulated by §§ 822 or 823 shall be permitted, subject to the standards of external effects in § 825.”

In addition, the external effects section regulates the impact of uses on neighboring properties, including issues like noise, vibration, and odor. Additional protections are required under §804, if such uses are adjacent to a residential or commercial district, therefore OP concludes that the external effects provisions would be appropriate for addressing potential concerns about the impact of a firing range on neighboring uses.

Home Occupation Use

The Office of Planning no longer recommends adoption of the definition of a “firearms dealer” as proposed in the OP final report. In response to the comments filed and in an effort to provide consistency in language, OP recommends an amendment to the home occupation section (§ 202) to prohibit a firearms retail sales establishment thus negating the need for a defined term of “firearms dealer.”

Best Practices

At the request of the Commission, OP has expanded its examination of best practices used by other cities. The previous research highlighted cities which specifically address the retail sale of firearms in their zoning regulations. Cities like New York and Chicago were not previously included because they restricted firearms sales through legislation rather than zoning codes. The attached table has been updated (see Table 1) to include additional cities as well as provide a brief summary of current gun laws. Of the new cities studied, which include New York, Chicago, and San Francisco, only one addresses the retail sale of guns in its zoning regulations, consisting of a prohibition of this use as a home occupation.

With regard to gun laws, there are several similarities amongst the communities reviewed. A standard requirement for those wishing to purchase weapons is to first obtain a license or permit and register the weapon itself with the police department. The actual gun restrictions are typically enforced via the licensing and registration process. Other common regulations include specific requirements of the firearm licensee, including a minimum age limit (either 18

or 21) and lack of prior offenses, drug use, or history of mental instability. All of the communities studied provided exemptions of these rules for law enforcement personnel (often including retired employees), which may also include wardens, members of armed forces, and/or security guards. Some communities also address gun shows, travel to gun shows, and the sale or transfer of antique firearms as being exempt from their "standard" firearms regulations.

The regulation of firearms and their retail sale varies amongst the communities studied. In cities with more stringent gun control laws, less emphasis is placed on regulating the location of gun stores, with the exception of San Francisco, which includes location restrictions as part of their licensing requirements. Instead of utilizing zoning tools to restrict the retail sale of firearms, these communities rely on comprehensive firearms permit and licensing procedures, typically found in the conduct or public safety sections of their municipal codes. These regulations often include explicit lists of permitted and prohibited types of weapons, safety certification requirements prior to the issuance of a firearms permit, as well as limits on the issuance of gun licenses. In cities with less stringent regulations, the applicable zoning requirements become more robust, including a combination of conditional zoning approval and location restrictions.

Further hearing unnecessary

The Office of the Attorney General has advised this Office that the revised text does not have to be re-advertised or a second public hearing held. The Zoning Act only requires that the public notice of a proposed amendment "include a general summary of the proposed amendment or amendments of the regulation." D.C. Official Code § 6-641.03. The point of a hearing is to explore the merits of the proposal and other alternatives. Even if the Commission chose a somewhat different approach at the time it takes proposed action, the public will have an opportunity to comment upon it during the thirty day comment period that must be afforded.

B. Need for emergency action.

During the course of discussions that led to the revised rule, representatives of the Metropolitan Police Department made it clear that the 300 foot radius restriction being proposed was a minimum requirement to ensure that the establishment of the use in the less restrictive commercial districts would not jeopardize public health and safety. Unless the Commission adopts the revised rule on an emergency basis, there will be no radius limitation in place between November 25th and the date that any final rule becomes effective. In addition, permitting the use to be established in C-1 zones, as would be permitted should the emergency rule expire, could compromise the character of these low density areas.

VI. CONCLUSION

Based on discussion with MPD and OAG, OP has revised its recommendations to complement licensing procedures and avoid duplication of requirements. The Office of Planning has also met with Councilman Mendelson to review his comments and issues and he has stated that he is in agreement with the revised recommendations.

The Office of Planning **recommends** that the Zoning Commission take proposed action to approve and emergency action to adopt the proposed amendments to 11 DCMR (ZONING) as

stated. The Commission's action will allow for the advertisement of a Second Notice of Emergency and Proposed Rulemaking and the referral of the text to the National Capital Planning Commission for its review.

JLS/ayj

Arlova Jackson, Case Manager

Attachments: **Table 1 - Summary of Selected US Cities' Gun Laws and Zoning Regulations Pertaining to Firearms Sales**
 Exhibit 1 - Existing C-2-A through C5, CM, and M Districts Map
 Exhibit 2 - Permitted Locations for Firearms Retail Sales Establishments Map

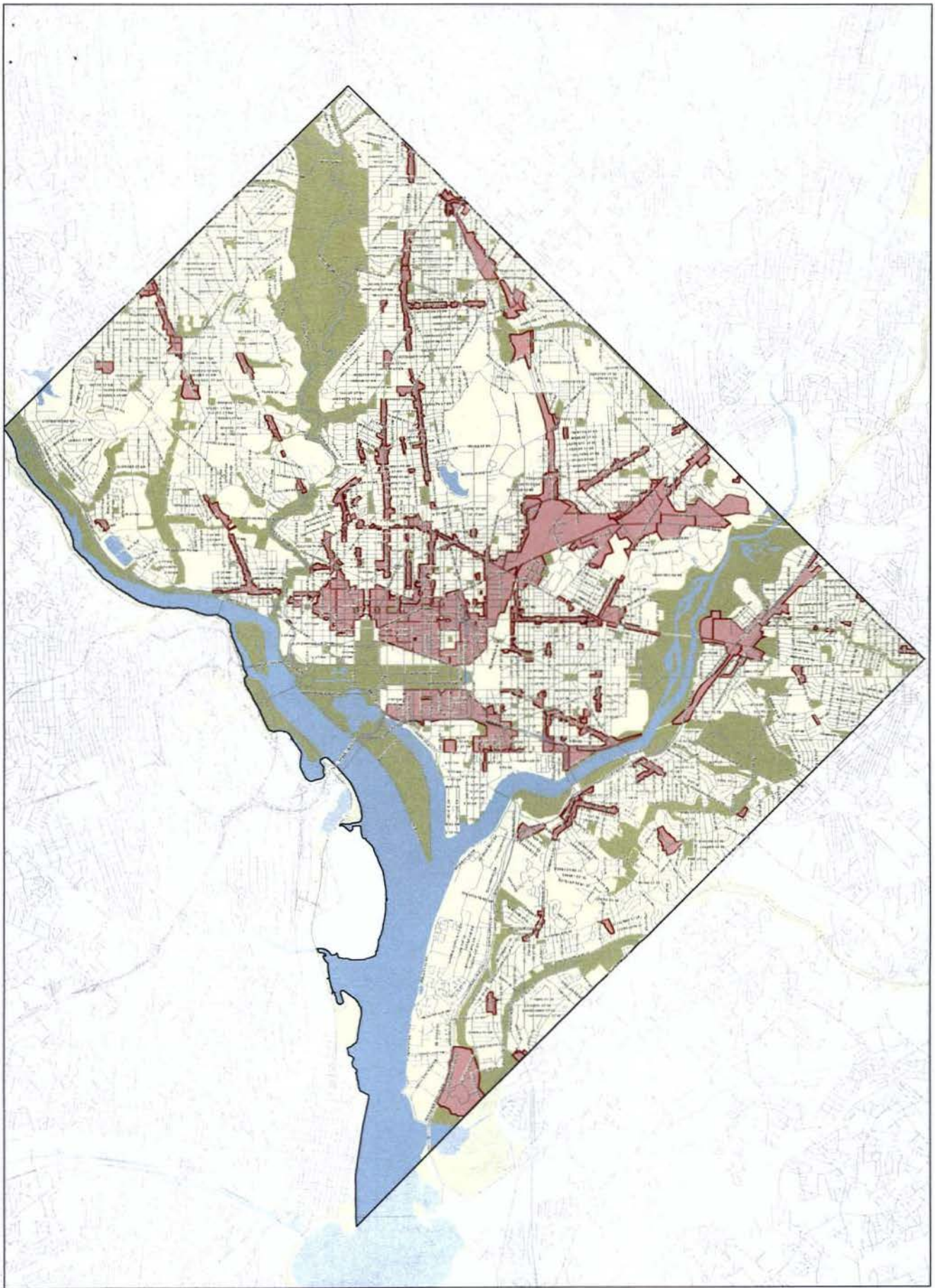
Table 1 – Summary of Selected US Cities’ Gun Laws and Zoning Regulations Pertaining to Firearms Sales

City	Gun Laws	Conditional Zoning Approval Required?	Zoning Regulations	Notes
Baltimore, MD	Prohibited to carry long barrel firearms Dealers <u>must</u> sell firearms w/ child safety locks 7-day waiting period for gun purchase	Yes	100 yards from the boundary line of a park, religious institution, educational institution, public building, or other place of public assembly B-2 (Community Business) B-3 (Community Commercial) B-4 (Central Business) B-5 (Central Commercial)	Gun “offenders” must register w/ Police Commissioner
Chicago, IL	Illegal to register handguns, sawed-off shotguns, machine guns, short-barreled, rifles, assault weapons, mufflers/silencers, or any other weapons Handgun registration may be granted to someone w/ an existing legal license or law enforcement personnel – only for guns w/ a safety mechanism and load indicator No person w/out a license may own ammunition Sale of assault weapons and ammunition, fragmenting or metal piercing bullets, and disguised firearms prohibited	N/A	No explicit mention of gun sales except to prohibit sale of firearms/ammunition as a home occupation	Regulates display and sale of utility knives Detailed definition section Antique firearms explicitly exempted from definition of firearm

City	Gun Laws	Conditional Zoning Approval Required?	Zoning Regulations	Notes
Detroit, MI	Prohibition on sawed-off shotguns, machine guns, and short barreled rifles Safety training required for registration and issuance of gun permit Concealed carry of pistols requires a separate license	Yes	B3, B4, B5 and B6 commercial zones M1, M2, M3, and M4 industrial zones Planned Development Districts	Firing ranges are allowed in the B3, B4, B5 and B6 commercial zones, M5 industrial zones, and Planned Development Districts as conditional uses. The minimum 500' distance required from residentially zoned land may be waived if 2/3 of the population w/in 500' signs a petition.
New York, NY	Sale of ammunition only by licensed dealers Illegal to sell "deceptively colored" weapons Dealers cannot sell more than one firearm at a time or sell to anyone more than once w/in a 90-day period Manufacturer/dealer liable for any deaths that occur by a firearm it has transferred if individual wasn't authorized to possess a gun or if they sell it illegally License for pistol/revolvers lasts 1-3 years	N/A	No explicit mention of gun sales; Gun repair is a listed retail/service use and allowed in at least one district Manufacture of firearm machinery allowed in several industrial zones	Designates assault weapons Gun free school safety zones Stringent regs on appearance of toy guns

City	Gun Laws	Conditional Zoning Approval Required?	Zoning Regulations	Notes
Philadelphia, PA	<p>Limit handgun purchases to one a month</p> <p>Police allowed to confiscate guns with a judge's approval from people considered a danger to themselves or others</p> <p>Prohibits gun possession by people subject to protection from abuse orders</p> <p>Illegal to possess weapon w/in 100' of an elementary or secondary school building</p>	<p>Yes –for all districts except C6 Commercial and the most intense industrial district</p>	<p>1,000' from other “regulated” or similar uses or commercial entertainment districts; and 500' from residential or residentially-related uses (e.g., churches, schools, playgrounds, etc...)</p> <p>Allowed as of right in the C6 Commercial and “least restrictive” industrial district</p>	<p>“Regulated uses” are those deemed to cause blight in an area. Examples include adult video/book stores, pawn shops, check cashing/payday loan stores, and prisons. All have the same locational restrictions.</p> <p>*****</p> <p>State Supreme Court overturned a local ban on owning assault rifles in 1996</p> <p>State court recently struck down lawsuit against PA General Assembly for not passing enabling legislation to allow enforcement of several proposed gun laws (9/27/08)</p>

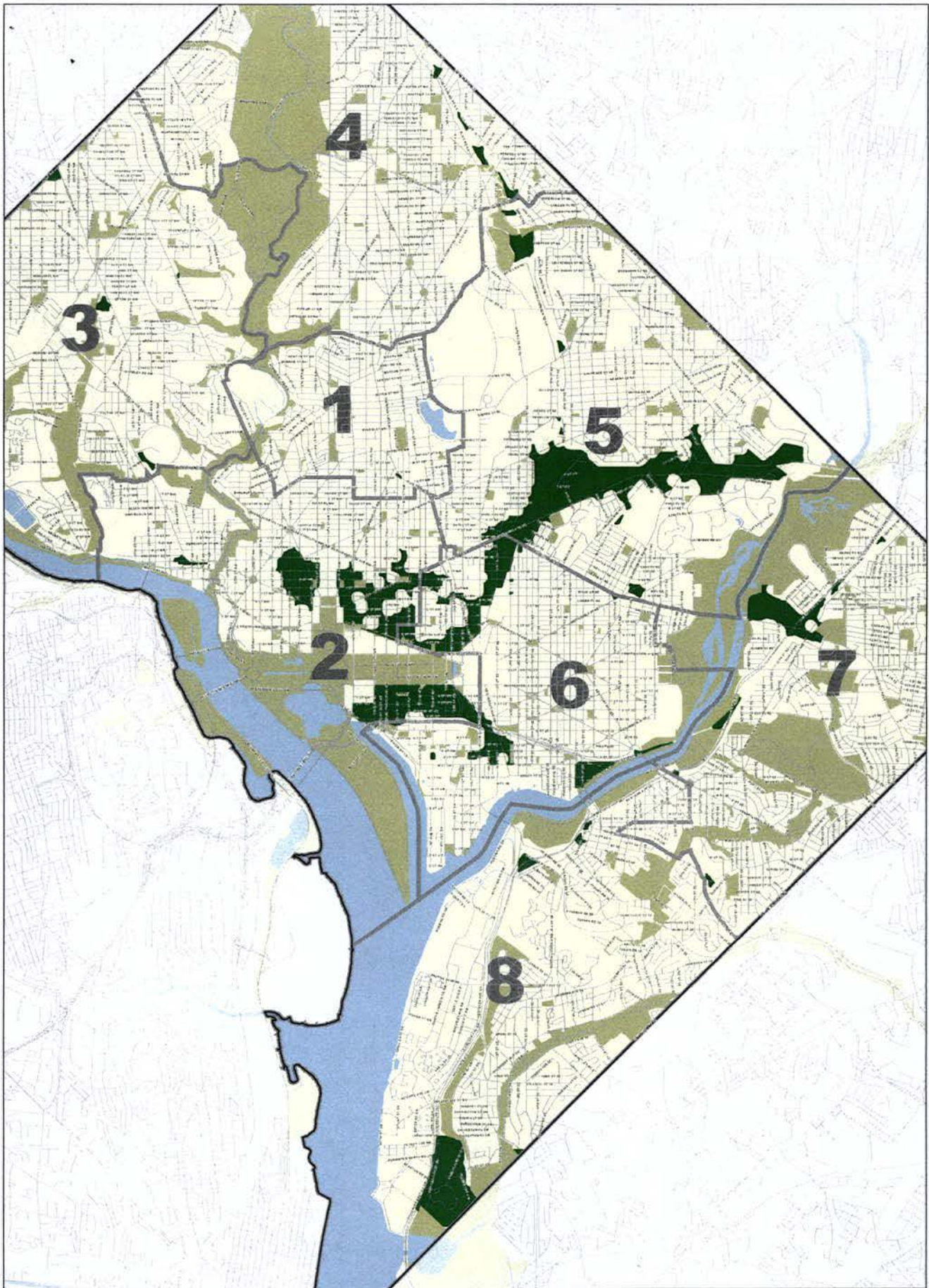
City	Gun Laws	Conditional Zoning Approval Required?	Zoning Regulations	Notes
San Francisco, CA	<p>Handgun w/in residence must be stored in locked container or disabled</p> <p>License cannot be issued if dealer is located in any of following locations:</p> <ul style="list-style-type: none"> ❖ RH, RM, RC, NC, or RED zone or w/in 1,000' of exterior boundary of such districts ❖ w/in 1,000' of day care center or day care home or elementary, junior high, or high school ❖ w/in 1,000' of community center, church, neighborhood center, or recreational center (both public and private) ❖ w/in 1,500' of any other firearms dealer <p>Security requirements for dealers</p> <p>10-day waiting period for purchaser</p> <p>Licensee cannot sell ammunition that does not serve sporting purposes or those designed to expand or fragment upon impact</p>	N/A	N/A	<p>Applications for dealer licenses forwarded to building inspection, fire, and city planning departments</p> <p>Requires dealers to post notices w/in place of business explaining rules of sale</p> <p>Persons ineligible to be granted licenses prohibited from entering gun stores</p> <p>Bans possession/sale of firearms on City and County property</p>



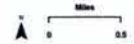
Government of the
 District of Columbia
 Adrian M. Fenty, Mayor
 Office of Planning - November 7, 2008
 This map was created for planning
 purposes from a variety of sources.
 It is neither a survey nor a legal document.
 Information provided by other agencies
 should be verified with them where appropriate.

Proposed Allowed Zoning Districts for Firearms Retail Sales Establishments

C-2-A, C-2-B, C-2-C, C-3-A, C-3-B, C-3-C,
 C-4, C5, C-M-1, C-M-2, and M Zones



**Proposed Allowed Locations for
Firearms Retail Sales Establishments**



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- Street Centerlines
- Ward Boundaries
- Allowed Areas