

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Office of Zoning**




OFFICE OF THE SECRETARY  
ODAI

2008 DEC 16 A 9:11

**MEMORANDUM**

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**To:** Office of Documents and Administrative Issuance

**From:** Sharon S. Schellin   
Secretary to the Zoning Commission

**Date:** December 15, 2008

**Re:** Publication for the Office of Zoning

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Please publish the following in the *D.C. Register* on December 26, 2008:

1. Z.C. Notice of Further Public Hearing (Case No. 08-20); and
2. Z.C. Notice of Second Emergency & Proposed Rulemaking (Case No. 08-20).

**Attachment**

ZONING COMMISSION  
District of Columbia

CASE NO. 08-20

EXHIBIT NO. 18

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441 4<sup>th</sup> Street, N.W., Suite 200/210-S, Washington, D.C. 20001

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ZONING COMMISSION

District of Columbia

CASE NO.08-20

EXHIBIT NO.18

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF FURTHER PUBLIC HEARING**

**TIME AND PLACE:**            **Thursday, February 26, 2009, @ 6:30 P.M.**  
                                 **Office of Zoning Hearing Room**  
                                 **441 4<sup>th</sup> Street, N.W. Suite 220-S**  
                                 **Washington, D.C. 20001**

**FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:**

**Case No. 08-20 (Text Amendment – DCMR Title 11 - Text Amendment to Regulate Firearms Retail Sales Establishments)**

**THIS CASE IS OF INTEREST TO ALL ANCs**

On July 28, 2008, the Office of Zoning received a report that served as a petition from the District of Columbia Office of Planning requesting certain amendments to the Zoning Regulations concerning firearms and firearms retail sales establishments. At a properly noticed special public meeting on July 28, 2008, the Zoning Commission (the “Commission”) set down this case for a public hearing. The Commission also took action to adopt the amendments on an emergency basis and authorized the publication of a notice of proposed rulemaking. A Notice of Emergency and Proposed Rulemaking and a Notice of Public Hearing were published in the *D.C. Register* on August 8, 2008 (55 DCR 8547 and 55 DCR 8516, respectively).

The amendments permitted a Firearms Retail Sales Establishment use in a C-3-C through C-5 zones as a special exception and disallowed the use in all other zones, whether as a principal or an accessory use. In addition, the use was conditioned upon compliance with several requirements and the maintenance of a 600 foot buffer between it and certain other uses and the boundary line of any residence and special purpose zone.

At a properly noticed hearing held September 29, 2008, the Commission heard public testimony and, in response thereto, requested additional information from the Office of Planning. The Commission also received written comments submitted on behalf of the National Rifle Association. After consulting with the Metropolitan Police Department and the Office of the Attorney General, the Office of Planning, by supplemental report dated November 14, 2008, submitted a revised proposal and requested that the Commission take proposed action to approve, and emergency action to adopt, the revised amendments. The Office of Planning did not specifically request that another public hearing be held.

The revisions differed in several respects from the published rules. Specifically the revised proposal would (i) prohibit a firearms retail sales establishment use as a home occupation; (ii) allow firearm retail sales establishments as a permitted use in the C-2-A through C-5 Commercial Districts and in both of the Industrial Zones; (iii) eliminate the performance conditions; and (iv) reduce the buffer area from 600 to 300 feet. The use would continue to be disallowed in all other zone districts, whether as a principal or an accessory use.

At a properly noticed public meeting held November 20, 2008, the Commission adopted the revised amendments on an emergency basis and authorized the publication of a notice of

proposed rulemaking. That Notice of Emergency and Proposed Rulemaking is published in this volume of the *DC Register*.

The Commission also decided to advertise the revised rules for a public hearing.

The following amendments to the Zoning Regulations Title 11 (DCMR) are proposed. Addition to existing provisions shown in **bold** and underlined text:

1. *Amend Chapter 1, the Zoning Regulations, by adding the following definitions to § 199.1:*

**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 5, Special Purpose Districts, § 502.7, 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 as a principal or an accessory use.**

3. *Amend Chapter 6, Mixed Use (Commercial Residential) Districts, § 602.1, to add firearms retail sales establishment to the list of prohibited uses, by adding a new paragraph (r) to read as follows:*

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

4. *Amend Chapter 7, Commercial Districts, as follows:*

(a) *Amend § 702.4 to read 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 a principal or an accessory use.**

(b) *Amend, § 721.3 by adding a new paragraph (u) to read as follows:*

721.3 (u) Firearms retail sales establishments, provided that no portion of the establishment shall be located within three hundred feet (300 ft.) of:

- (i) A Residence (R) or Special Purpose (SP) District; or
- (ii) A church or other place of worship, public or private school, public library, or playground.

5. *Amend Chapter 9, Waterfront Districts, as follows:*

*(a) Amend § 901.2 to read 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 a principal or an accessory use.**

*(b) Amend § 902.1 by adding a new paragraph (r) to read as follows:*

**902.1 (r) Firearms Retail Sales Establishment.**

Proposed amendments to the Zoning Regulations and Map of the District of Columbia are authorized pursuant to the Zoning Act of June 20, 1938, (52 Stat. 797), as amended, D.C. Official Code § 6-641.01, *et seq.*

The public hearing on this case will be conducted as a rulemaking in accordance with the provisions of § 3021 of the District of Columbia Municipal Regulations, Title 11, and Zoning. Pursuant to that section, the Commission will impose time limits on testimony presented to it at the public hearing.

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information should be forwarded to Sharon Schellin, the Secretary of the Zoning Commission, Office of Zoning, Suite 200/210-S, 441 4th Street, N.W., Washington, D.C., 20001. Please include the number of this particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

**ANTHONY J. HOOD, GREGORY N. JEFFRIES, MICHAEL G. TURNBULL, AND PETER G. MAY, ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA; BY JERRILY R. KRESS, FAIA, DIRECTOR; AND BY SHARON SCHELLIN, SECRETARY TO THE ZONING COMMISSION.**

OFFICE OF THE SECRETARY  
ODAI

# RULEMAKING TRANSMITTAL FORM

2008 DEC 16

TYPE OF RULEMAKING ACTION:  EMERGENCY RULES  
 FINAL RULES  PROPOSED RULES  COMBINED

DATE AND TIME RECEIVED

AGENCY: OFFICE OF ZONING

Office of Documents use only

AGENCY REPRESENTATIVE: SHARON SCHELLIN

ADDRESS: 441 4<sup>th</sup> Street, N.W., Suite 210 South

TELEPHONE: (202) 727-0340

**TITLE AND DESCRIPTION OF RULES:**

CASE NO. 08-20 (TEXT AMENDMENTS - FIREARMS AND FIREARM RETAIL SALES ESTABLISHMENTS)

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: Title 11 (Zoning) Sections 199, 502, 602, 702, 721, 901, and 902

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: DCR DATE:

COMPLETE CITATION to the statute, regulation, or other legal authority which specifically authorizes the issuance of the substance of these rules: Section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799 D.C. Official Code § 6-641.01).

LEGAL CERTIFICATION: I certify that I have reviewed the attached rulemaking and, in my opinion, the substance of the text of the rules is legally sufficient.

DATE: DECEMBER 10, 2008

SIGNED:

*Alan Bergstein*

PHONE: (202) 442-9777

FINAL

CONDITIONAL

NAME: ALAN BERGSTEIN

TITLE: SECTION CHIEF

PROMULGATOR: Name and title of the person legally authorized to adopt and promulgate these rules (or the name of the board or other body authorized to adopt rules by vote)

Zoning Commission For The District Of Columbia

Title:

COMPLETE CITATION to the statute, regulation, order, or other legal authority that specifically authorizes this person or agency to adopt and promulgate these rules.

Section 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799 D.C. Official Code § 6-641.01).

**SIGNATURE OF THE PERSON AUTHORIZED TO ADOPT RULES OR ATTEST TO THE ADOPTION OF RULES**

DATE OF APPROVAL OF VOTE:

11-20-08

APPROVAL OF ATTEST:

*Sharon J. Schellin*

Secretary to the Zoning

TITLE: Commission

PHONE: (202) 727-0340

Office of Documents use only:

THIS NOTICE PUBLISHED AT:

VOL:

DCR:

DATE:

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**SECOND NOTICE OF EMERGENCY and PROPOSED RULEMAKING**  
**Z.C. Case No. 08-20**  
**(Text Amendments – Firearms and Firearm Retail Sales Establishment)**

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to the authority set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Official Code § 6-641.01) and § 6 (c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505 (c)), hereby gives notice of the adoption, on an emergency basis, of amendments to chapters 1, 5, 6, 7, and 9 of the Zoning Regulations (DCMR, Title 11).

On July 28, 2008, the Office of Zoning received a report that served as a petition from the District of Columbia Office of Planning (“OP”) requesting certain amendments to the Zoning Regulations concerning firearms and firearms retail sales establishments. At a properly noticed special public meeting on July 28, 2008, the Commission set down this case for a public hearing. The Commission also took action to adopt the amendments on an emergency basis and authorize the issuance of a notice of proposed rulemaking. A Notice of Emergency and Proposed Rulemaking and a Notice of Public Hearing were published in the *D.C. Register* (“DCR”) on August 8, 2008 (55 DCR 8547 and 55 DCR 8516, respectively). The amendments permitted a Firearms Retail Sales Establishment use in a C-3-C through C-5 zones as a special exception and disallowed the use in all other zones, whether as a principal or an accessory use. In addition, the use was conditioned upon compliance with several requirements and the maintenance of a 600 foot buffer between it and certain other uses and the boundary line of any residence and special purpose zone.

At a properly noticed hearing held September 29, 2008, the Commission heard public testimony and, in response thereto, requested additional information from the OP. The Commission also received written comments submitted on behalf of the National Rifle Association. After consulting with the Metropolitan Police Department and the Office of the Attorney General, the OP, by supplemental report dated November 14, 2008, submitted a revised proposal and requested that the Commission take proposed action to approve, and emergency action to adopt, the revised amendments. OP did not specifically request that another public hearing be held.

The revisions differed in several respects from the published rules. Specifically the revised proposal would (i) prohibit a firearms retail sales establishment use as a home occupation; (ii) allow firearm retail sales establishments as a permitted use in the C-2-A through C-5 Commercial Districts and in both of the Industrial Zones; (iii) eliminate the performance conditions; and (iv) reduce the buffer area from 600 to 300 feet. The use would continue to be disallowed in all other zone districts, whether as a principal or an accessory use.

At a public meeting on November 20, 2008, the Commission adopted the revised amendments on an emergency basis and authorized the issuance of a notice of proposed rulemaking. The Commission also decided to advertise the revised rules for a public hearing. The notice of that hearing is also published in this volume of the *D.C. Register*.

The Commission adopted the first set of rules on an emergency basis as a result of a recent Supreme Court decision that invalidated some District of Columbia laws regulating handgun ownership. Since some types of guns could now be owned by District residents, they could also be sold by District retailers. The Zoning Regulations did not specifically regulate such retail activity, so it was likely that gun sales could occur in any zone district where retail uses were permitted, including all commercial, mixed-use, industrial, and waterfront zone districts. The emergency rules temporarily restricted the retail sales of firearms in the manner described in the second paragraph of this Notice in order to allow the District to time assess where and how the use could safely be permitted.

The revised, less restrictive proposal is the product of the assessment undertaken by the District. However, the Commission believes that it should not permanently adopt this proposal without a further opportunity for public testimony. Compliance with the Charter notice requirement for public hearings will extend this proceeding beyond the November 25, 2008 expiration date of the first emergency. To go forward with no rules in place would permit the establishment of gun shops without the radius restriction believed necessary by the Metropolitan Police Department and into areas believed inappropriate by OP. The Commission, therefore, adopted of the proposed revised rules on an emergency basis "as necessary for the immediate preservation of the public ... safety." (D.C. Official Code § 2-505 (c).)

The revised emergency rule was adopted on November 20, 2008, and became effective on that date.

The emergency rule will expire on March 20, 2009, which is the 120<sup>th</sup> day after the adoption of the rule, or upon the publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

The Commission also gives notice of its intent to take final rulemaking action to adopt the following amendments to the Zoning Regulations in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register* or thirty days following referral of this amendment to the National Capital Planning Commission, whichever occurs last.

Title 11 (DCMR) is amended as follows with addition to existing provisions shown in **bold** and underlined text:

1. *Amend Chapter 1, the Zoning Regulations, by adding the following definitions to § 199.1:*

**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.

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- (ii) A church or other place of worship, public or private school, public library, or playground.

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(a) *Amend § 901.2 to read 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 a principal or an accessory use.**

*(b) Amend § 902.1 by adding a new paragraph (r) to read as follows:*

**902.1 (r) Firearms Retail Sales Establishment.**

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 4<sup>th</sup> Street, N.W., Suite 200/210-S, Washington, D.C. 20001. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.