

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MEMORANDUM

To: Office of Documents and Administrative Issuance (via-email)
From: Sharon S. Schellin^{S3}
Secretary to the Zoning Commission
Date: March 10, 2009
Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on March 13, 2009:

1. Z.C. Notice of Final Rulemaking & Order No. 08-20.

Attachment

ZONING COMMISSION
District of Columbia
CASE NO. 08-20
EXHIBIT NO. 27

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ZONING COMMISSION
District of Columbia
CASE NO.08-20
EXHIBIT NO.27

RULEMAKING TRANSMITTAL FORM

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

AGENCY: OFFICE OF ZONING

AGENCY REPRESENTATIVE: SHARON SCHELLIN

DATE AND TIME RECEIVED

Office of Documents use only

ADDRESS: 441 4th Street, N.W., Suite 210 South

TELEPHONE: (202) 727-0340

TITLE AND DESCRIPTION OF RULES: Text Amendment to Regulate Firearms Retail Sales Establishments, Z.C. No. 08-20

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: §§ 199.1, 502.7, 602.1, 702.4, 721.3, and 902.1 of the Zoning Regulations (Title 11 DCMR).

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: 54 DCR 9445 DATE: December 26, 2008

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: MARCH 9, 2009

SIGNED:

Alan Bergstein

PHONE: (202) 442-9777

FINAL CONDITIONAL NAME: ALAN H. BERGSTEIN 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.

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

DATE OF APPROVAL OF VOTE:

3-9-09

APPROVAL OF ATTEST:

Sharon S. Schellin

TITLE: Secretary to the Zoning

Commission

PHONE: (202) 727-0340

Office of Documents use only:

THIS NOTICE PUBLISHED AT:

VOL:

DCR:

DATE:

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 08-20
Z.C. Case No. 08-20
(Text Amendments – 11 DCMR)
Text Amendment to Regulate Firearms Retail Sales Establishments
March 9, 2009

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 as required by § 3 of the Act (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission (“NCP”) for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of adoption of the following amendments to §§ 199.1, 502.7, 602.1, 702.4, 721.3, and 901.2 of the Zoning Regulations (11 DCMR) to add a definition of firearms and firearms retail sales establishment; permit firearm retail sales establishments as a permitted use in the C-2, C-3, C-4, C-5, C-M, and M Zone Districts, to establish specific requirements regulating their location within those zones; to provide that the firearms retail sales establishments use is not permitted as a principal or accessory use in other Commercial zones or in Special Purpose, Commercial-Residential, or Waterfront zones; and prohibit firearms retail sales establishments as a home occupation.

A Notice of Proposed Rulemaking was published in the *D.C. Register* (“DCR”) on December 26, 2008 (54 DCR 9445). The Commission took final action to adopt the amendments at a public meeting held on March 9, 2009, making no changes to the proposed text.

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

Setdown Proceedings

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”) asking the Commission to adopt on an emergency basis, and set down for public hearing, amendments to the Zoning Regulations that would add a definition of firearms and firearms retail sales establishment to § 199; permit firearm retail sales establishments as a special exception use in the C-3-C, C-4, and C-5 Zone Districts; establish specific requirements regulating the location of firearm retail sales establishments within those zones, including a 600-foot distance requirement from residential areas and related uses, particularly places where children congregate, such as schools and playgrounds; and clarify that firearm retail sales use is not permitted as a principal or accessory use in other Commercial zones or in Special Purpose, Mixed-Use Commercial-Residential, Industrial, or Waterfront zones. The regulations also prohibited firearms retail sales establishments as a home occupation.

OP made these requests in response to a recent Supreme Court decision that invalidated some District of Columbia laws regulating handgun ownership. The District was in the process of amending its laws to comply with the principles stated in that ruling. The Zoning Regulations were silent with regard to the sale of firearms and could be interpreted as permitting the retail sale of firearms as a matter-of-right principal or accessory use within any commercial, mixed-use, industrial, or waterfront zone district that permits retail 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 issued a notice of proposed rulemaking. The Notice of Emergency and Proposed Rulemaking and notice of the public hearing were published in the *D.C. Register* on August 8, 2008 (55 DCR 8547 and 8516, respectively).

Public Hearing and Comment

The Commission held its first public hearing on the proposed text amendments on September 29, 2008. At the public hearing, OP testified that the proposal would not be inconsistent with the Comprehensive Plan and would provide needed zoning regulations for this particular use of land. The Commission also heard testimony from Councilmember Phil Mendelson, the chair of the Council of the District of Columbia's Committee on Public Safety and the Judiciary. Councilmember Mendelson expressed concerns about what he considered to be the restrictive nature of the proposed regulations and the lack of a connection between the location restrictions proposed and the anticipated impact of gun stores. As an alternative, he presented a revised amendment that would allow the use as-of-right in several districts and lessen the location restriction radius. Other testimony, in person and in writing, included statements generally in favor of the OP proposal but recommending a wider location restriction, and ones in opposition, noting that the proposed regulations were too restrictive and potentially prone to legal challenge. Concerns were also raised about the need to better coordinate the work of various District agencies working on revised District laws pertaining to firearms. It was suggested the Commission suspend its final decision on the text amendment until the Council completed its review and revisions of the District's current gun laws. At the conclusion of the hearing, the Commission asked OP to consult further with the Metropolitan Police Department, the Office of the Attorney General, and Councilmember Mendelson's office and to recommend any revisions to the proposed rule it considered appropriate.

By letter dated October 27, 2008, the National Rifle Association ("NRA") offered its comments on the proposed rule. NRA requested that the proposed text amendment be revised to permit firearms retail sales establishment as a matter-of-right within all commercial and industrial zones. NRA also requested elimination of any location requirements.

After undertaking the consultation requested, 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.

The Commission adopted the revised proposal on an emergency basis at its November 20, 2008 public meeting and elected to readvertise the revised proposal for a new public hearing to allow additional public comment.

As noted, the second Notice of Proposed Rulemaking was published in the *D.C. Register* on December 26, 2008 (54 DCR 9445). No comments were received.

The second public hearing was held on February 26, 2009. OP testified that the revised proposal was in response to the issues and comments raised at the earlier public hearing. Staff from the Metropolitan Police Department ("MPD") testified about current procedures for obtaining a dealer's license, as well as purchasing and registering a firearm, the operating parameters for licensed firearms dealers, requirements prohibiting the display of firearms, and the existing multilayered review of such establishments both by the Bureau of Alcohol, Tobacco, Firearms and Explosives and MPD. The Citizens Association of Georgetown testified in opposition to the proposal, requesting reinstatement of the 600-foot standard, in light of the proximity of commercial and residential uses, and asserting that parking requirements should not be waived for handgun sales stores in historic districts. The Commission received a letter from Advisory Neighborhood Commission ("ANC") 2E that urged adoption of the 600-foot standard originally proposed, as well as a letter from ANC 6B noting no objection to OP's revised proposal.

At the conclusion of the February 26, 2009 public hearing, the Commission voted to refer the proposed text to the National Capital Planning Commission ("NCPC"), which by report dated March 6, 2009, found that the proposed text amendment would not adversely affect the federal interests or 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 March 9, 2009. No changes were made to the advertised prepared text. With regard

to the position of ANC 2E and Citizens Association of Georgetown that the initially proposed 600-foot buffer should be reinstated and the NRA's position that no buffer should exist at all, the Commission finds that the separation of firearms retail sales establishments from uses typically associated with residential uses or those characterized by the presence of children and large groups has value in terms of protecting the safety and security of these groups. However, the Commission also finds that the security measures and operational controls imposed by the federal and local gun laws in the District of Columbia will mitigate the impact of such uses on nearby residential areas. As a result, the Commission finds lessening the location restriction from 600 feet to 300 feet to be an acceptable change that will continue to protect residential areas and related 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.

As to the remaining contentions of the NRA, the Commission finds that the current regulations provide ample opportunities for District residents to purchase and own firearms, in that they allow for their sale as a permitted, as-of-right use in 11 zones and within every ward of the District. The current regulations, which also take into account the varied character and intensity of the District's commercial zones, permit the retail sale of firearms in all of the commercial zones except the C-1. The C-1 zone is a neighborhood shopping zone aimed at providing for the daily retail and personal service needs of a small geographic area. The Commission felt that a firearms retail sales establishment would likely draw from a larger service area and, therefore, would be more appropriate beginning in the C-2 zones. These zones, called Community Business Center Districts, allow for the shopping and business needs for larger areas within the District, outside of the central core.

Lastly, the Commission finds it unnecessary to waive the parking requirements for firearms retail sales establishments because the existing Zoning 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. Finally, the current firearms license and registration policy does not require licensed gun owners to transport firearms in a vehicle.

Based on the above, 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.

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.

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 the W-1, W-2, and W-3 Districts 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.

Vote of the Zoning Commission taken at the conclusion of its public hearing on February 26, 2009, to **APPROVE** the proposed rulemaking (for NCPC referral purposes): **3-0-2** (Anthony J. Hood, Peter G. May and Michael G. Turnbull to approve; Gregory N. Jefferies and William W. Keating, III, not present, not voting).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on March 9, 2009, by a vote of **3-0-2** (Anthony J. Hood and Peter G. May to adopt; Michael G. Turnbull to adopt by absentee ballot; and Gregory N. Jeffries and William W. Keating, III, not having 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 _____.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 08-20
Z.C. Case No. 08-20
(Text Amendments – 11 DCMR)
Text Amendments to Regulate Firearms Retail Sales Establishments
March 9, 2009**

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