

GOVERNMENT OF THE DISTRICT OF C MBIA
OFFICE OF PLANNING



Office of the Director

MEMORADUM

DATE: July 25, 2008
TO: District of Columbia Zoning Commission
FROM: Jennifer Steingasser, Deputy Director, Development Review & Historic Preservation, DC Office of Planning
SUBJECT: Zoning Commission Case 08-20, Waiver of Rules for Late Submittal of an Emergency Text Amendment to regulate the establishment of a firearms retail sales establishment use.

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The attached report concerning Zoning Commission Case 08-20 is being submitted less than 10 days prior to the Zoning Commission's Special Public Meeting. The Office of Planning respectfully requests that the Commission waive its rule and accept the report into the record to consider emergency action on this proposal.

JLS/ajj

ZONING COMMISSION
District of Columbia

CASE NO. 08-20
EXHIBIT NO. 3

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District of Columbia
CASE NO.08-20
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MEMORANDUM

TO: Zoning Commission for the District of Columbia

FROM: Jennifer Steingasser, Deputy Director *JS*

DATE: July 25, 2008

SUBJECT: Report for **Setdown for Zoning Commission Case 08-20 - Text Amendments to the Zoning Regulations to regulate firearms retail sales establishments, and request that the amendments be adopted on an emergency basis, initiated by the Office of Planning.**

I. RECOMMENDATION

The Office of Planning requests that the Zoning Commission:

- 1) Adopt the following text amendments on an emergency basis:
 - a. Amendment to Chapter 1 (Definitions) §199 to add a definition of firearms and firearms retail sales establishment;
 - b. Amendment to Chapter 7 (Commercial Districts) to:
 - i. permit firearm retail sales establishments as a special exception use in the C-3-C, C-4, and C-5 districts and establish specific requirements regulating the location of firearm retail sales establishments within these zones by the addition of §§'s 746, 757, and 769;
 - ii. not permit firearm retail sales as a principal or accessory use within the C-1, C-2, C-3-A, and C-3-B Districts; and
 - c. Amendments to Chapters 5 (Special Purpose Districts), 6 (Mixed Use Commercial – Residential District), 8 (Industrial District), and 9 (Waterfront Districts) to clarify that firearms retail sales use is not permitted as a principal or accessory use in these zones.
2. Set down Zoning Commission Case 08-20 for a public hearing.
3. Authorize the immediate publication of a notice of public hearing and proposed rulemaking.

II. BACKGROUND

A recent Supreme Court decision (*District of Columbia vs. Heller*) invalidated some of the District's laws regulating handgun ownership. The District is in the process of amending its existing laws to comply with the principles stated in that ruling such that District residents will be able to lawfully possess handguns in the District.

The 1958 Zoning Regulations were adopted prior to the enactment of the District laws struck by the Court. Firearms were not previously defined or addressed in the zoning regulations, but it is likely that the regulations would 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 district which permits retail establishments.

III. PROPOSAL

The purpose of this text amendment is to define the proposed use, and recommend regulations pertaining to the location of firearms retail sales establishments, and the sale of firearms as an accessory use within another retail establishment such as pawn shops, department stores, or sporting good stores.

The proposal as recommended by OP includes a set of text amendments which would restrict firearm sales establishments to the C-3-C, C-4, and C-5 Districts (located in the downtown area of the District of Columbia, as shown on the attached map), and establish guidelines related to their operation and approval review. Firearm retail sales would also be permitted as an accessory use, subject to the same set of guidelines and criteria. Additional text amendments note where firearm retail sales are not permitted.

The proposed regulations and guidelines are based on a combination of:

- other District laws pertaining to firearms;
- 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; and
- a cursory best practice study of other cities which regulate this use.

IV. JUSTIFICATION FOR EMERGENCY ACTION

There are three main reasons for the emergency request:

1) Unanticipated Need for Gun Regulations in the Zoning Regulations:

As a result of the recent Supreme Court decision, possession of handguns will now be generally legal for private home use. This may lead to a surge of interest in the purchase and sale of handguns, and firearms in general. The current zoning regulations are silent with regard to the sale of firearms. Based on the text of the current zoning regulations, retail stores selling firearms could be classified as "other retail uses" and allowed, as-of-right, in any district that permits retail. Likewise, firearm sales could be classified as accessory to other forms of existing retail such as a pawn shop or a sporting goods store. As such, an establishment selling firearms could be located in virtually any commercially zoned building in any part of the city.

2) Avoid Creating Non-conforming Uses:

Retail uses are currently permitted as-of-right in the following districts:

- CR Mixed Use (Commercial Residential)
- C1 Neighborhood Shopping
- C2 Community Business Center

- C3 Major Business and Employment Center
- C4 Central Business
- C5 (PAD) Pennsylvania Avenue Development
- CM Commercial- Light Manufacturing
- M General Industry
- W Waterfront

As stated previously, the **current** zoning regulations allow firearm retail sales in any of the above listed districts as-of-right, as either a principal or accessory use. The proposed text amendment would limit the location of firearms sales uses to within three of these zones. In the event that such a use is requested to be established prior to the Zoning Commission publishing a final order with regard to this issue, the proposed text amendment would limit the potential for creating non-conforming uses, and would limit such uses to locations best able to accommodate them.

3) Summer Recess:

Emergency action is required to avoid leaving this issue unresolved until after the pending August recess of the Zoning Commission.

V. ANALYSIS

The proposal is consistent with District efforts to comply with the recent Supreme Court ruling regarding handgun ownership while providing a procedure for the regulation of firearm retail sales. The proposed text amendment would allow the sale of firearms as a special exception in the most intense, downtown commercial districts. The proposed text also includes locational requirements that would restrict such uses based on their proximity to residential areas and related uses, particularly places where children congregate, such as schools and playgrounds. The zoning regulations currently contain identical locational restrictions on the operation of sexually oriented business establishments. Many other uses are permitted only by special exception in various zones; each with review criteria. As such, the proposal is also consistent with current zoning regulations and practice in the District.

OP has, to date, examined four examples of other U.S. cities that utilize zoning regulations to address the sale of firearms - Minnesota, Denver, Philadelphia, and Detroit. All four allow such uses conditionally and/or subject them to specific geographic and operational criteria. These include requiring a minimum distance from residential and institutional uses as well as regulating signage. These communities allowed retail sales of firearms within their general commercial, downtown business, or industrial districts. A more comprehensive analysis of this best practice study will be provided prior to the public hearing.

Currently, the C-3-C, C-4, and C-5 zones are the most “intense” of the District’s commercial districts. These zones are designed for medium to high density commercial, residential, and mixed-use developments. This use, subject to the special exception criteria, would have the least potential to negatively impact these districts or the uses they currently permit. These areas are also, typically, developed with relatively new and substantial buildings where safety and security for these businesses can be best assured.

Special exceptions, as provided for in § 3104.1, are subject to the review and approval of the Board of Zoning Adjustment (BZA). The BZA is authorized to grant special exception requests if the proposed use is found to be in harmony with the purpose and intent of the

zoning regulations and that it does not unduly adversely impact neighboring properties. The special exception process allows for a public review of the proposed use by affected neighbors, the local Advisory Neighborhood Commission (ANC), and various District agencies. The special exception process is an appropriate mechanism to ensure that potential impacts are considered prior to their establishment. Such a public review process would also provide a greater sense of perceived safety since the public will understand the location and operation of any establishment selling firearms.

VI. RECOMMENDATION

The Office of Planning (OP) recommends that the Zoning Commission adopt the following text amendment to DCMR, Title 11, Chapter 1 (The Zoning Regulations) and Chapter 7 (Commercial Districts), with all new text shown in bold.

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 devoted to 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 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 firearm retail sales shall not be permitted.**

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

602.1 (r) Firearms retail sales establishment or firearm retail sales as an accessory use.

4. 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 firearms retail sales shall not be permitted as an accessory use.**

5. Amend Chapter 7 Commercial (C) District §722.3 C-2 Accessory Uses as follows:

722.3 Other accessory uses customarily incidental and subordinate to the uses permitted in C-2 Districts shall be permitted in a C-2 District, **except that firearms retail sales shall not be permitted as an accessory use.**

6. Amend Chapter 7 Commercial (C) District §742.5 C-3 Accessory Uses by adding the following subsection as follows:

742.5 Firearm retail sales as an accessory use shall only be permitted by special exception in accordance with the provisions of §746.

7. Amend Chapter 7, Commercial (C) by adding the following special exception use for the C-3-C District, in a new §746:

- 746 Firearms Retail Establishments (C-3-C)**
- 746.1 A firearms retail establishment or firearm retail sales as an accessory use shall be permitted in C-3-C District as a special exception only if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this section.**
- 746.2 No portion of the establishment shall be located within six hundred feet (600 ft.) of a Residence or Special Purpose District.**
- 746.3 No portion of the establishment shall be located within six hundred feet (600 ft.) of a church, school, library, or playground.**
- 746.4 No firearms or ammunition shall be displayed in window areas visible from a street or sidewalk.**
- 746.5 Any firearm retail sales establishment shall have appropriate measures to ensure the business can be secured at all times.**
- 746.6 Any firearm retail sales establishment shall be located on the ground level of a building and provide direct access to the exterior.**
- 746.7 Any proposal for a new or expanded firearm retail sales establishment shall be referred to the Chief of Police, Metropolitan Police Department for review and comment regarding security measures, and to the Director, Office of Planning for review and comment regarding potential neighborhood impacts.**

8. Amend Chapter 7 Commercial (C) District §752.5 C-4 Accessory Uses by adding the following subsection as follows:

752.5 Firearm retail sales as an accessory use shall only be permitted by special exception in accordance with the provisions of §757.

9. Amend Chapter 7 Commercial (C) District by adding the following special exception use for the C-4 District, in a new §757:

- 757 Firearms Retail Establishments (C-4)**
- 757.1 A firearms retail establishment shall be permitted in C-4 District as a special exception only if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this section.**
- 757.2 No portion of the establishment shall be located within six hundred feet (600 ft.) of a Residence or Special Purpose District.**

- 757.3** No portion of the establishment shall be located within six hundred feet (600 ft.) of a church, school, library, or playground.
- 757.4** No firearms or ammunition shall be displayed in window areas visible from a street or sidewalk.
- 757.5** Any firearm retail sales establishment shall have appropriate measures to ensure the business can be secured at all times.
- 757.6** Any firearm retail sales establishment shall be located on the ground level of a building and provide direct access to the exterior.
- 757.7** Any proposal for a new or expanded firearm retail sales establishment shall be referred to the Chief of Police, Metropolitan Police Department for review and comment regarding security measures, and to the Director, Office of Planning for review and comment regarding potential neighborhood impacts.

10. Amend Chapter 7 Commercial (C) District §761.7 C-5 Accessory Uses by adding the following subsection as follows:

761.7 Firearm retail sales as an accessory use shall only be permitted by special exception in accordance with the provisions of §769.

11. Amend Chapter 7 Commercial (C) District by adding the following special exception use for the C-5 District, in a new §769:

- 769** Firearms Retail Establishments (C-5)
- 769.1** A firearms retail establishment shall be permitted in C-5 District as a special exception only if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this section.
- 769.2** No portion of the establishment shall be located within six hundred feet (600 ft.) of a Residence or Special Purpose District.
- 769.3** No portion of the establishment shall be located within six hundred feet (600 ft.) of a church, school, library, or playground.
- 769.4** No firearms or ammunition shall be displayed in window areas visible from a street or sidewalk.
- 769.5** Any firearm retail sales establishment shall have appropriate measures to ensure the business can be secured at all times.
- 769.6** Any firearm retail sales establishment shall be located on the ground level of a building and provide direct access to the exterior.
- 769.7** Any proposal for a new or expanded firearm retail sales establishment shall be referred to the Chief of Police, Metropolitan Police Department for review and comment regarding security measures, and to the Director, Office of Planning for review and comment regarding potential neighborhood impacts.

12. Amend Chapter 8 Industrial Districts by amending §801.2 Uses as a Matter of Right in CM as follows:

801.2 Any commercial use permitted in the C-4 District under §751, except establishments whose principal use is the administration of massages, sexually-oriented business establishments, **firearm retail sales establishment**, and international organizations, shall be permitted as a matter of right in a C-M District. For purposes of this subsection, a community-based residential facility shall not be considered a commercial use.

13. Amend Chapter 8 Industrial Districts §801.8 Accessory Uses as follows:

801.8 Accessory uses and accessory buildings customarily incidental to the uses otherwise authorized by §§801 through 803 shall be permitted as a matter of right in a C-M District, including mechanical amusement machines subject to 8 2501, **except that firearm retail sales shall not be permitted as an accessory use.**

14. Amend Chapter 8 Industrial Districts by amending §821.4 Uses as a Matter of Right in M as follows:

821.4 Accessory uses and accessory buildings customarily incidental to the uses in this section, including mechanical amusement machines subject to §2501, shall be permitted, **except that firearm retail sales shall not be permitted as an accessory use.**

15. Amend Chapter 8 Industrial Districts by amending §823.1 Prohibited Uses as follows:

823.1 (o) Firearm Retail Sales Establishment.

16. Amend Chapter 9 Waterfront Districts by amending §901.2 Uses as a Matter of Right in 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 firearm retail sales shall not be permitted as an accessory use.**

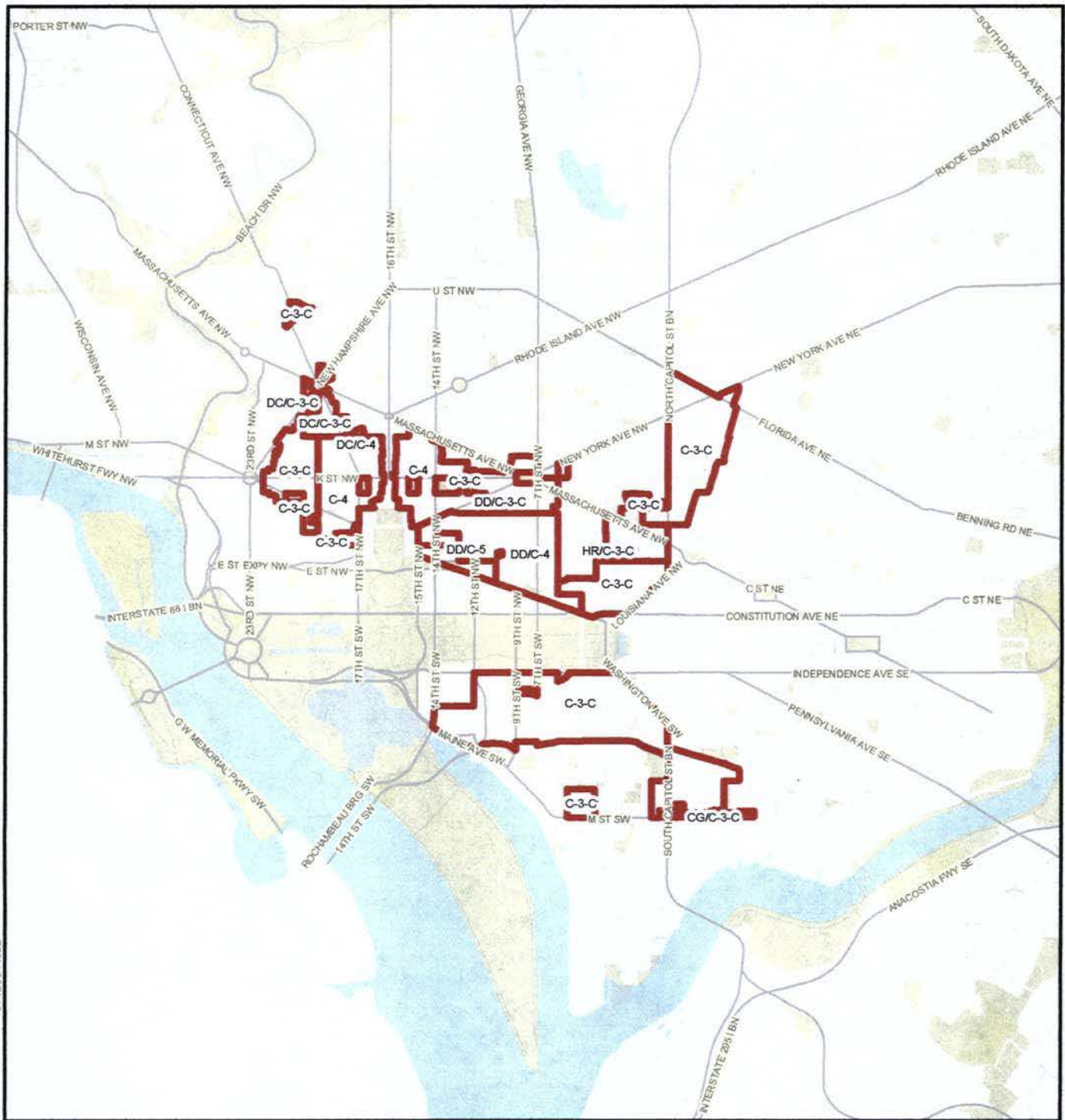
17. Amend Chapter 9 Waterfront Districts by amending §902.1 Prohibited Uses as follows:

902.1 (r) Firearm Retail Sales Establishment.

VII. CONCLUSION

The Office of Planning has consulted with the Office of Attorney General on the proposed language and recommends that the Zoning Commission set the proposed text amendments down for public hearing, and requests that the amendments be adopted on an emergency basis.

District of Columbia: Existing C-3-C, C-4, and C-5 Zones



ORID0014822

★ ★ ★ Government of the District of Columbia
■ Adrian M. Fenty, Mayor
 Office of Planning ~ July 25, 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.

Legend

- Zoning Districts (C3C, C4, C5)
- Water
- Parks
- Major Roads
- Street Centerlines

