

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MEMORANDUM

To: Office of Documents and Administrative Issuance

From: Sharon S. Schellin³
Secretary to the Zoning Commission

Date: July 30, 2008

Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on August 8, 2008:

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

Attachment

ZONING COMMISSION
District of Columbia

CASE NO. 08-20
EXHIBIT NO. 4

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

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

ZONING COMMISSION
District of Columbia
CASE NO.08-20
EXHIBIT NO.4

OFFICE OF DOCUMENTS

JUL 30 2008 PM 1:39 ^{MDA}

RULEMAKING TRANSMITTAL FORM

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

DATE AND TIME RECEIVED

Office of Documents use only

AGENCY: OFFICE OF ZONING

AGENCY REPRESENTATIVE: JERRILY KRESS

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

TELEPHONE: (202) 727-6311

TITLE AND DESCRIPTION OF RULES: Text Amendments – Firearms and Firearm Retail Sales Establishments. Text amendments to define “firearms” and “firearms retail sales establishments” and to set forth where, and with what restrictions, such establishments may be permitted.

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: The following existing rules will be amended: Title 11 (Zoning) §§ 199, 502, 602, 702, 722, 742, 752, 761, 801, 821, 823, 901, and 902. The following new rules will be added: Title 11 (Zoning) §§ 746, 757, and 769.

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: Sections 1 and 3 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 798), D.C. Official Code §§ 6-641.01 and 6-641.03.

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: JULY 30, 2008

SIGNED: *Peter J. Nickles* (Acting for) PHONE: (202) 442-9777

FINAL CONDITIONAL NAME: PETER J. NICKLES TITLE: ATTORNEY GENERAL

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. Sections 1 and 3 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 798), D.C. Official Code §§ 6-641.01 and 6-641.03.

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

DATE OF APPROVAL OF VOTE:

7-28-08

APPROVAL OF ATTEST:

Sharon J. Schellen

Secretary to the Zoning

TITLE: Commission

PHONE: (202) 727-0340

Office of Documents use only:

THIS NOTICE PUBLISHED AT:

VOL:

DCR:

DATE: ZONING COMMISSION District of Columbia

CASE NO. 08-20

EXHIBIT NO. 4

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF EMERGENCY and PROPOSED RULEMAKING
Z.C. Case No. 08-20
(Text Amendments – Firearms and Firearm Retail Sales Establishment)
July 28, 2008**

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in §§ 1 and 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Official Code §§ 6-641.01 and 641.07) and the authority set forth in section 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 § 199 and chapters 5, 6, 7, 8, and 9 of the Zoning Regulations (DCMR, Title 11).

These amendments 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, and establish specific requirements regulating the location of firearm retail sales establishments within those zones; 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.

A recent Supreme Court decision invalidated some District of Columbia laws regulating handgun ownership. The District is in the process of amending its laws to comply with the principles stated in that ruling. This action is being taken on an emergency basis because the Zoning Regulations were silent with regard to the sale of firearms and, absent immediate action by the Zoning Commission, the regulations might have been 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.

This emergency rule was adopted on July 28, 2008 and became effective on that date.

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.

The emergency rule will expire on November 25, 2008, which is the 120th day after the adoption of the rule, or upon the publication of a Notice of Final Rulemaking in the *Register*, whichever occurs first.

The proposed amendments to the Zoning Regulations are as follows (additions to the existing text are 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.

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