



2008 SEP 19 PM 3:21

MEMORANDUM

TO: Zoning Commission for the District of Columbia
FROM: Jennifer Steingasser, Deputy Director *JS*
DATE: September 18, 2008
SUBJECT: 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.

I. RECOMMENDATION

The Office of Planning requests that the Zoning Commission:

- 1) Approve the following text amendments to the Zoning Regulations:
 - a. Amendment to Chapter 1 (Definitions) §199 to add a definition of firearms, firearms retail sales establishment, and firearms dealer;
 - b. Amendment to Chapter 2 (R-1 Residence District) §203.9 (Home Occupation) to add firearms dealer to the list of prohibited uses;
 - c. 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
 - d. 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.

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 emergency amendment request, filed by the Office of Planning, was in response to a recent Supreme Court decision (District of Columbia vs. Heller) that invalidated some of the District's laws regulating handgun ownership.

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ZONING COMMISSION
District of Columbia
EXHIBIT NO. 7
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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.

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 District of Columbia Council passed amendments to the emergency firearms legislation adopted in July 2008 on September 16, 2008 as part of this ongoing effort.

III. MODIFICATIONS FROM SETDOWN

There are several changes to the proposed text from what was presented at setdown. The first is the addition of the term “firearms dealer”. Due to their retail nature, a firearms retail service establishment as proposed would be a prohibited home occupation. A firearms dealer, which would be viewed as a home office, would not. Staff suggests that “firearms dealer” be added to the list of prohibited home occupations.

The second change was to remove the requirement that firearms retail sales establishments be located on the ground floor of a building. After discussions with the Metropolitan Police Department (MPD), staff is concerned that requiring such uses on the ground level would increase the potential for theft by making firearms and ammunition more accessible. As such, this requirement has been removed.

Finally, the requirement for review by the Office of Planning was also eliminated to reduce redundancy. Since OP would automatically view such requests as part of the special exception process, this requirement is not necessary. Other changes reflect minor corrections to ensure that terms are used consistently throughout the text (e.g., referring to retail sales establishments as opposed to retail sales uses).

IV. PROPOSED TEXT

The Office of Planning (OP) recommends that the Zoning Commission 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**. Text that has been removed since the initial setdown is shown in ~~striketrough 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 devoted to 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.

Firearms dealer: any person licensed to sell, lease, or transfer firearms under federal law.

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

(c) Firearms dealer.

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 §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 a firearms retail sales establishment shall not be permitted as an accessory use.**

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

742.5 Firearms retail sales establishments as accessory uses shall only be permitted by special exception in accordance with the provisions of §746.

8. 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 Sales Establishments (C-3-C)

746.1 A firearms retail sales establishment ~~or firearm sales as an accessory use~~ shall be permitted in the 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 (R) or Special Purpose (SP) 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 firearms retail sales establishment shall have appropriate measures to ensure the business can be secured at all times.
- ~~746.6~~ ~~Any firearms retail sales establishment shall be located on the ground level of a building and provide direct access to the exterior~~
- 746.76** 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.

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

752.5 Firearms retail sales establishments as accessory uses shall only be permitted by special exception in accordance with the provisions of §757.

10. 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 Sales Establishments (C-4)**
- 757.1** A firearms retail sales establishment shall be permitted in the 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 firearms retail sales establishment shall have appropriate measures to ensure the business can be secured at all times.
- ~~757.6~~ ~~Any firearms retail sales establishment shall be located on the ground level of a building and provide direct access to the exterior~~
- 757.76** Any proposal for a new or expanded firearms 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.

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

761.7 Firearms retail sales establishments as accessory uses shall only be permitted by special exception in accordance with the provisions of §769.

12. 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 Sales Establishments (C-5)**
- 769.1 **A firearms sales retail establishment shall be permitted in the 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 (R) or Special Purpose (SP) 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 firearms retail sales establishment shall have appropriate measures to ensure the business can be secured at all times.**
- ~~769.6 **Any firearms retail sales establishment shall be located on the ground level of a building and provide direct access to the exterior.**~~
- 769.76 **Any proposal for a new or expanded firearms 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.**

13. 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, **firearms retail sales establishments**, 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.

14. 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 a firearms retail sales establishment shall not be permitted as an accessory use.**

15. 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 a firearms retail sales establishment shall not be permitted as an accessory use.**

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

823.1 (o) Firearms Retail Sales Establishment.

17. 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 a firearms retail sales establishment shall not be permitted as an accessory use.**

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

902.1 (r) Firearms Retail Sales Establishment.

V. ANALYSIS

The purpose of this text amendment is to finalize 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 a pawn shop, department store, or sporting good store.

The proposal, as previously recommended and revised here by OP, includes a set of text amendments which restrict firearm retail 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, approval, and review. The retail sales of firearms would also be permitted as an accessory use, subject to the same set of guidelines and criteria, in these same zones. Additional text amendments note where firearm retail sales establishments are prohibited.

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

- other District laws pertaining to firearms;
- existing zoning regulations, which also limit certain uses by special exception to specific areas, and which have similar proximity requirements; and
- a study of other cities and counties which regulate this use.

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.

Current Proposal and Procedure

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. The firearms retail sales establishment 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.

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.

Best Practices

OP has examined the regulations for several other U.S. municipalities that utilize zoning to address the sale of firearms (see Table 1). While they vary in their standards for review and approval, one common characteristic is the use of specific geographic and operational criteria to determine where such uses may be located. Of the eight communities researched, six prohibit the sale of guns within a specified radius of certain uses. The distances ranged from 250’ to 1,500’, typically measured from the property line of the retail store to that of any residential district or use. Most communities also prohibited gun sales within a specified distance from uses like schools, parks, religious institutions, or other similar uses (e.g., another gun store).

Many cities also limited the location of firearm retail sales establishments to specific zoning districts, typically high-density business, commercial, or industrial districts. In addition, the majority of the cities examined did not permit the retail sale of guns as-of-right. A special review, approval, or permit is typically required and in some cases, additional review criteria were suggested for the reviewing body to consider prior to granting approval.

Few examples were found in the Mid-Atlantic region of communities that regulate gun sales in their zoning regulations. Most examples are found in the state of California and a few other locations scattered throughout the county. Another mechanism some communities use to regulate the sale of firearms is through gun licensing requirements. Cities currently utilizing this practice include Atlanta, GA, Alexandria, VA, Durham, NC, and Knoxville and Nashville, TN. For these municipalities, we found no specific guidance regarding permitted locations for gun sales; and the licensing provisions were typically found in the code sections dealing with public safety and weapons control, not within their zoning regulations.

Table 1 – Cities Currently Regulating Gun Sales in their Zoning Regulations

Best Practice City/County	Minimum Distance Requirement	Conditional Approval Required?	Districts in which use is allowed	Notes
Baltimore, MD	100 yards from the boundary line of a park, religious institution, educational institution, public building, or other place of public assembly	Yes	B-2 (Community Business) B-3 (Community Commercial) B-4 (Central Business) B-5 (Central Commercial)	Defines firearms sales and ammunition sales separately
Culver City, CA	1,000' from all other establishments that offer firearms for sale, and from parks, playgrounds, and primary and/or secondary schools.	No	n/a	n/a
Denver, CO	n/a	Yes/No	Permitted as-of-right in the B-4, B-8, MS, CMU, and TMU districts; Conditional use permit required for the B-8-A and B-8-G districts	Firearms sales classified as “special” retail which consists of uses thought to have an impact on surrounding neighborhood in terms of noise, pollution, traffic, or the type of goods sold Gun sales are also allowed as accessory uses in sporting goods stores
Detroit, MI	No minimum distance for gun stores but a 500' distance is required between firing ranges and residentially zoned land	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.

Best Practice City/County	Minimum Distance Requirement	Conditional Approval Required?	Districts in which use is allowed	Notes
Minneapolis, MN	250' from office/residential; 500' from "protected uses" (schools, churches, parks, etc...)	Yes	C4, General Commercial District B4C, Downtown Commercial District	Firing ranges prohibited Has already withstood legal appeal
New Haven, CT	1,500' from another similar use; 500' from the property line of any public or private elementary or secondary school, residential district, and predominantly residential Planned Development	Yes	BD (Central Business) BD-1 (Central Business/Residential) BE (Wholesale and Distribution), IL (Light Industry) IH (Heavy Industry)	The zoning regulations specify additional considerations for the board of zoning appeals including the following: (1) Secure storage and display areas, including a security system. (2) Security door or window grates. (3) Exterior lighting or site fencing. (4) Limited site access during non-business hours by means of fences, chains, or means specified by the board.
Philadelphia, PA	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...)	Yes –for all districts except C6 Commercial and the most intense industrial district	Allowed as of right in the C6 Commercial and "least restrictive" industrial district	"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.
Pittsburgh, PA	500' from: (1) Elementary or secondary school; (2) Public playground; (3) Public or non-profit operated recreation center; (4) Drug or alcohol rehabilitation center; (5) Church, synagogue, or temple; (6) Gaming enterprise.	Yes	NDI (Neighborhood Industrial), UNC (Urban Neighborhood Commercial), HC (Highway Commercial), GI (General Industrial), UI (Urban Industrial), GT (Golden Triangle), and DR (Downtown Riverfront) Districts	Also requires adequate security measures

VI. COMPREHENSIVE PLAN

The text amendment is not inconsistent with any of the Comprehensive Plan themes, goals, objectives, and policies. The major themes of the Plan tend to promote maintaining or improving the character of neighborhoods as well as enhancing public safety. The proposed changes further the goals of both of these themes and are not inconsistent with any specific areas of the Plan.

VII. AGENCY COMMENT

OP has been in contact with several District agencies since setdown of this amendment. OP staff met with representatives from the Metropolitan Police Department, Office of the Attorney General (OAG), and Department of Consumer and Regulatory Affairs (DCRA) to discuss the current text within the context of other changes to District laws regarding firearms. As a result, we have made minor changes to the text from what was presented at setdown in response to their concerns and in an effort to provide consistency between our efforts.

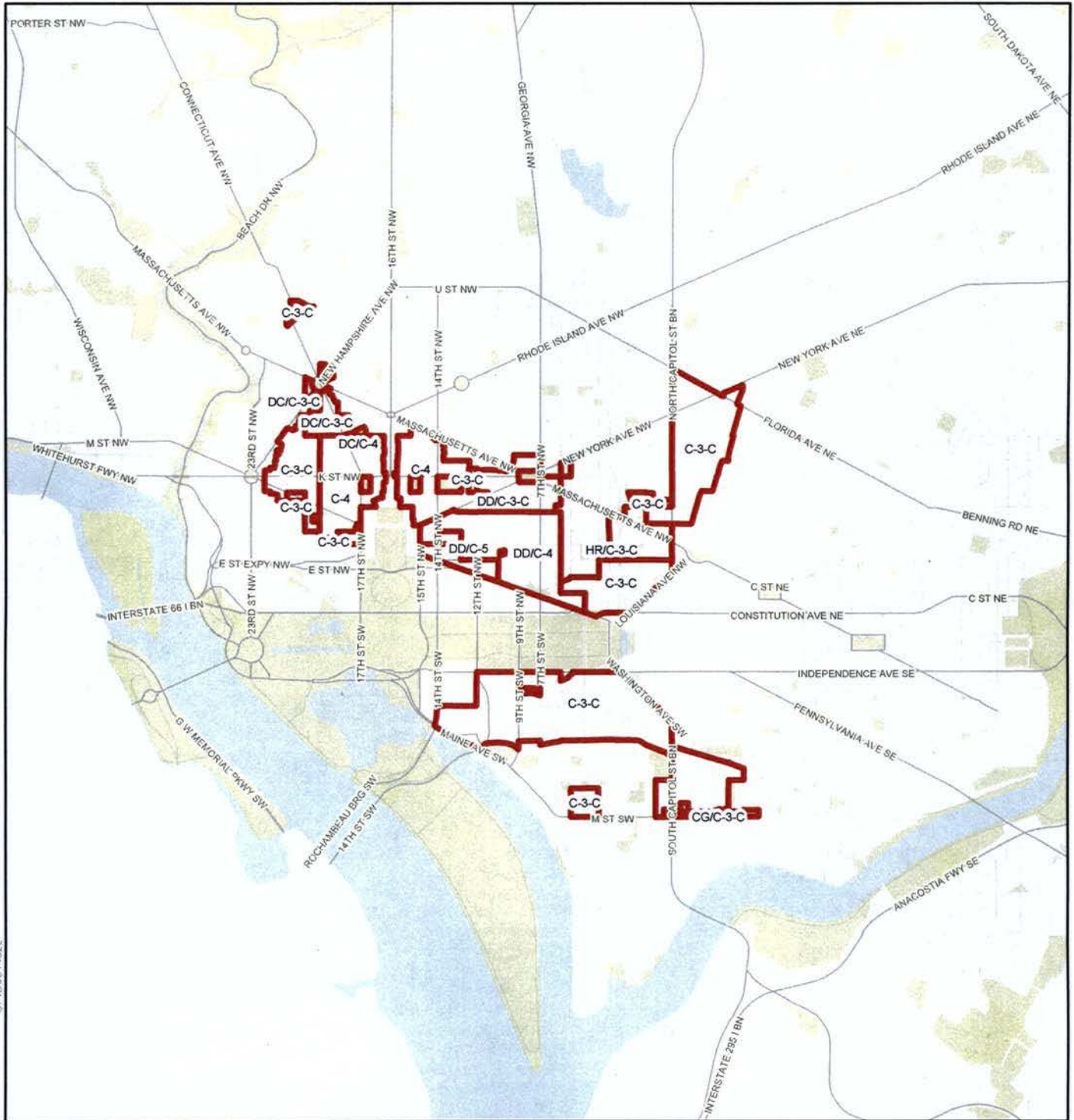
VIII. CONCLUSION

The Office of Planning recommends that the proposed amendments to 11 DCMR (ZONING) be approved.

JLS/ajj
Arlova Jackson, Case Manager

Attachments: C-3-C, C-4, and C-5 Zoning District Map
Permitted Locations for Firearms Retail Sales Establishments Map

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



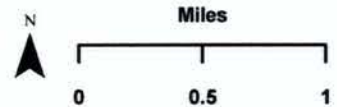
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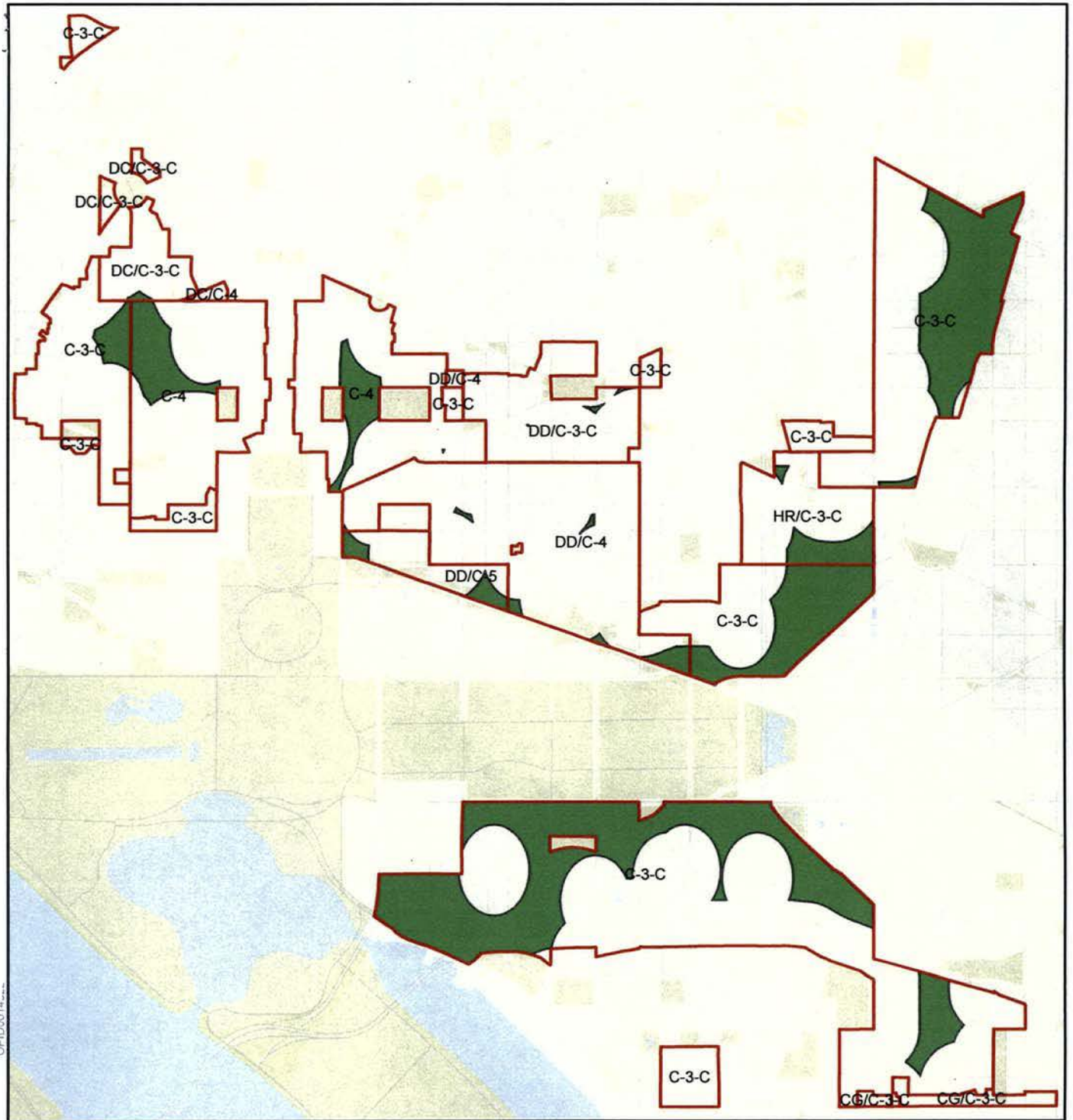
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Legend

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

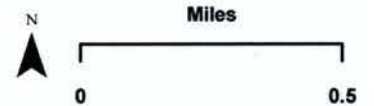


District of Columbia: Proposed Allowed Areas for Retail Sales



OPID0014

- Zoning Districts (C3C, C4, C5)
- Allowed (based on Amendment text)
- Street Centerlines
- Water
- Parks



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