

**MEMORANDUM**

TO: District of Columbia Zoning Commission

FROM: Jennifer Steingasser, Deputy Director *JS*

DATE: July 12, 2011

SUBJECT: ZC Case Number 11-16

The Office of Planning, on behalf of the Office of the Deputy Mayor for Public Safety and Justice request the Zoning Commission take the following actions:

- 1) **Emergency Action** for text amendments to the §721 of 11DCMR, Zoning Regulations, to permit firearm retail sales establishments ("FRSE") within a District law enforcement or licensing agency;
- 2) **Publish a Notice of Proposed Rulemaking** to permit firearm retail sales establishments within a District law enforcement or licensing agency;
- 3) **Setdown for public hearing** proposed text to permit firearm retail sales within a District law enforcement or licensing agency;
- 4) **Accept this report as** the supplemental filing required by 11 DCMR § 3130.1.;
- 5) **Allow the immediate advertisement** of the notice of public hearing by waiving the twenty-day period between the filing date of a supplemental filing and publication of a notice of public hearing as required by 11 DCMR § 3130.1.;
- 6) **Waive** the Commission rules to accept the Office of Planning report less than 10 days prior to the Zoning Commission's Public Meeting.

I. PROPOSED TEXT

The Office of Planning (OP) recommends that the Zoning Commission take emergency action to adopt the following text amendment to DCMR, Title 11 (The Zoning Regulations), publish a Notice of Proposed Rulemaking and set down for public hearing the following text amendment to DCMR, with all new text shown in **bold, underlined text**:

1. Chapter 7 Commercial (C) District § 721 Uses As of Right (C2), by adding the following bold and underlined language:

721.3 In addition to the uses permitted in C-1 Districts by § 701.4, the following retail establishments shall be permitted in a C-2 District as a matter of right:

- (k) Firearms retail sales establishments, provided that no portion of the establishment, **other than an establishment located at a District law enforcement or licensing agency**, shall be located within three hundred feet (300 ft.) or:*



- (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.*

The Deputy Mayor's Office provided the following justification for the requested text amendment and emergency action:

"The justification for this proposed amendment is that pursuant to federal law, District residents may purchase a handgun in another jurisdiction, but the handgun must be transferred into the District through a federal firearm licensee (FFL) dealer. The FFL is required to physically receive the firearm from outside the District and then provide it to the licensed owner. Recently the sole FFL engaged in processing the transfer of handguns from out of state into the District ceased operating because he can no longer use his existing location, and the cost of locating a qualified location would exceed the expected revenues from performing the transfer function for out of state handgun purchases. District residents are suddenly unable to purchase and register a handgun for use in self-defense within the home. There is an immediate need to preserve the safety and welfare of District residents by providing access to a District owned or controlled location for the operation of an FFL, so that the District's residents will have a reliable means to complete out of state handgun purchases and thereby register handguns for use in self-defense within their homes.

The District's proposed activity to provide a location to assist in the transfer of handguns for a fee would make that location subject to the location restrictions in 11 DCMR § 721.3. Without the amendment to the above regulation, the District's potential existing locations, which would be available for use by an FFL to perform the transfer of handguns from out of state, will be disqualified. For instance 300 Indiana Avenue, NW, the existing location where residents bring their handguns to the Metropolitan Police Department for registration, does not meet the location restriction in 11 DCMR § 721.3(k). The District's lack of a private FFL willing to perform this low profit transfer function has caused the District to be the subject of litigation alleging that the District is violating the 2nd Amendment rights of District residents seeking to obtain registrations for firearms that they purchased in another state. See Lane, et al v. Holder, et al, Case No: 1:11-CV-005030 GBL- TRJ (US Dist Ct. E.D. Va.). While the District is strongly opposing the lawsuit, promulgation of this amendment will allow the District to locate an FFL at one of its subordinate agencies to perform this transfer function and promote the safety and welfare of its residents. In addition, the location selected by the District will have to be reviewed and approved by the Alcohol Tobacco and Firearms Administration to assure that it is a suitable and safe location, thereby addressing the concerns that 11 DCMR § 721.3(k) was intended to address."