

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



July 18, 2011

Via E-Mail:

Marcel Acosta
Executive Director
National Capital Planning Commission
401 9th Street, N.W., Suite 500
Washington, D.C. 20004

Re: Notice of Proposed Rulemaking: Z.C. Case No. 11-16 (Office of Planning – Text Amendment to § 721.3)

Dear Mr. Acosta:

Please find attached a courtesy copy of the emergency and proposed rulemaking for the above-referenced case. The Commission took action to adopt the attached at its meeting held on July 14, 2011.

The rulemaking will be published in the *D.C. Register* on July 22, 2011, for a 30-day comment period. A public hearing has been scheduled for Monday, October 3, 2011.

No action is required by NCPC until after the hearing; this copy is being sent to NCPC as a courtesy only.

If you have any questions, contact me at the Office of Zoning on (202) 727-0340.

Sincerely,

A handwritten signature in black ink that reads "S. S. Schellin".

Sharon S. Schellin
Secretary to the Zoning Commission

cc: David W. Levy (via e-mail)
Jeff L. Hinkle (via e-mail)

ZONING COMMISSION
District of Columbia
CASE NO. 11-16
EXHIBIT NO. 3

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF EMERGENCY and PROPOSED RULEMAKING**

Z.C. Case No. 11-16

(Z.C. Case No. 11-16 (Office of Planning – Text Amendment to § 721.3))

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in sections § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2008 Repl.)) 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) (2006 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to § 721.3 (k) to exempt firearms retail sales establishments located in District law enforcement or licensing agencies from complying with the radius limitations of that provision. This would permit a retail sales establishment use at a District law enforcement agency located within three hundred feet (300 ft.) of a Residence (R) or Special Purpose (SP) Zone District; or a church or other place of worship, a public or private school, a public library, or a playground.

The request for emergency action was made by the Office of Planning on behalf of the Deputy Mayor for Public Safety in response to the recent inability of District residents to purchase hand guns for self-defense within their homes.

There is at present no location within the District for the lawful purchase of hand guns. Until recently, District residents were able to purchase hand guns from out of state dealers holding a federal firearm license (FFL), which were then transferred into the District through a District business also holding an FFL. This District FFL is required to physically receive the firearm from outside the District and then provide it to the licensed owner. Pursuant to federal law, this is the only means that purchased hand guns may be transferred between states or between a state and the District.

According to the Deputy Mayor, the sole District FFL engaged in processing the transfer of handguns from out of state into the District recently lost the use of his location and ceased operations. Attempts to relocate have thus far proved unsuccessful because his expenses at potential eligible locations will likely exceed expected revenues for this low volume business.

The District has identified locations within District agencies that could serve as the location for this business that could be offered at an affordable rate, but none meet the radius requirements of § 721.3 (k). For instance, 300 Indiana Avenue, N.W., the existing location where residents bring their handguns to the Metropolitan Police Department for registration, is within three hundred feet (300 ft.) of a Special Purpose Zone. Only by adopting this relatively narrow exemption on an emergency basis can the District assist in the reestablishment of a District FFL business. Once that occurs, District residents, who purchased hand guns from an out-of-state FFL, will again be able to register those hand guns for self-defense in their District homes. The Commission, therefore, accepts the Deputy Mayor's conclusion that the immediate adoption of this amendment is necessary for the "immediate preservation of public ... safety." D.C. Official Code § 505 (c) (2001).

This emergency rule was adopted on July 14, 2011, 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 (30) days following referral of this amendment to the National Capital Planning Commission, whichever occurs last.

The emergency rule will expire on November 11, 2011, which is the one hundred twentieth (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:

Title 11 of the District of Columbia Municipal Regulations, ZONING, Chapter 7, COMMERCIAL DISTRICTS, § 721, USES AS A MATTER OF RIGHT (C-2), § 721.3, is amended by inserting the phrase “, other than an establishment located at a District law enforcement or licensing agency,” after the phrase “provided that no portion of the establishment”, so that the entire section reads as follows:

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:

- (a) Antique store or shop;
- (b) Auction house;
- (c) Automobile accessories sales, including installations;
- (d) Automobile and truck sales;
- (e) Boat or other marine sales;
- (f) Department store;
- (g) Display stand or store for mail order sales;
- (h) Drive-in type restaurant;
- (i) Dry goods store;
- (j) Fast food establishment or food delivery service, only in a C-2-B or C-2-C District; provided:

- (1) No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a Residence District, unless separated therefrom by a street or alley;
 - (2) If any lot line of the lot abuts an alley containing a zone district boundary line for a Residence District, a continuous brick wall at least six feet (6 ft.) high and twelve inches (12 in.) thick shall be constructed and maintained on the lot along the length of that lot line;
 - (3) Any refuse dumpsters shall be housed in a three (3) sided brick enclosure equal in height to the dumpster or six feet (6 ft.) high, whichever is greater. The entrance to the enclosure shall include an opaque gate. The entrance shall not face a Residence District; and
 - (4) The use shall not include a drive-through. Subparagraphs (1) and (2) shall not apply to a fast food establishment located in Square 5912.
- (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.) of:
- (1) A residence (R) or Special Purpose (SP) District; or
 - (2) A church or other place of worship, public or private school, public library, or playground.
- (l) Furniture store;
- (m) Home furnishings sales;
- (n) Ice sales;
- (o) Leather goods store;
- (p) Musical instruments and accessories sales;
- (q) Office supplies and equipment sales;
- (r) Optical goods store;

- (s) Precision instrument sales; and
- (t) Prepared food shop, except that in a C-2-A District, a prepared food shop with greater than eighteen (18) seats for patrons shall only be permitted by special exception pursuant to 11 DCMR § 712.

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.