

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
Z.C. CASE NO. 20-10¹
(Text Amendment – Subtitle U of Title 11 DCMR)
(Restrictions on Fast Food Establishments and Prepared Food Shops)
September 14, 2020

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2018 Repl.), and pursuant to § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2016 Repl.)), hereby gives notice of the following amendment of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified).

The text amendment eases restrictions on fast food establishments and prepared food shops in the MU Use Group D and E categories in the MU-3, MU-4, MU-17, MU-24, MU-25, MU-26, and MU-27 zones, as follows:

- Subtitle U, Use Permissions
Chapter 5, Use Permissions Mixed Use (MU) Zones
 - § 510.1 – removing current limitation of 18 seats for matter of right prepared food shops (MU-Use Group D)
 - § 511.1 – adding special exception relief for a fast food establishment (MU-Use Group D)
 - § 511.2 – limiting the ban on special exception relief for a fast food establishment to single-tenant detached buildings (MU-Use Group D)
 - § 512.1 – removing current limitation of eighteen (18) seats for matter of right prepared food shops (MU-Use Group E) and renumbering alphabetically
 - § 513.1 – clarifying the conditions for special exception relief for fast food or food delivery establishments (MU-Use Group E) and correcting cross-references
 - § 516.1 – correcting a cross-reference and renumbering alphabetically
 - § 518.1 – correcting a cross-reference and renumbering alphabetically

Setdown

On May 1, 2020, the Office of Planning (OP) filed a petition proposing the text amendment.

¹ For Office of Zoning tracking only, this Notice of Final Rulemaking shall also be known as Z.C. Order No. 20-10.

At its May 11, 2020, public meeting, the Commission voted to grant OP's request to set down the proposed text amendment for a public hearing and authorized flexibility for OP to work with the Office of the Attorney General to refine the proposed text and add any conforming language as necessary.

Public Hearing

OP filed a pre-hearing report on July 10, 2020, confirming that it had discussed the proposed text amendment with both the Department of Consumer and Regulatory Affairs and the District Department of Transportation (DDOT) and that both agencies supported the text amendment, with DDOT supportive of maintaining the current prohibition on drive-throughs.

At its public hearing on July 21, 2020, the Commission heard testimony from OP in support of the proposed text amendment. No other person or entity testified or submitted comments prior to the hearing.

Proposed Action

At the close of the public hearing, the Commission voted to take **PROPOSED ACTION** and to authorize the publication of a Notice of Proposed Rulemaking:

VOTE (July 21, 2020): **4-0-1** (Robert E. Miller, Peter A. Shapiro, Anthony J. Hood, and May, Michael G. Turnbull to **APPROVE**; Peter G. May, not present, not voting)

Notice of Proposed Rulemaking

The Commission published the proposed amendment as a Notice of Proposed Rulemaking (NOCR) in the *D.C. Register* (67 DCR 9223, *et seq.*) on July 31, 2020.

No comments to the NOCR were received in the thirty- (30) day period required by § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206, as amended; D.C. Official Code § 2-505 (2013 Repl.)).

National Capital Planning Commission (NCPC)

The Commission referred the proposed amendment to NCPC on July 23, 2020, for the thirty (30)-day review period required by § 492 of the District Charter.

NCPC did not file a report in response within the thirty (30)-day period.

Great Weight” to the Recommendations of OP

The Commission must give “great weight” to the recommendations of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

The Commission finds OP's recommendation that the Commission adopt the text amendment persuasive and concurs in that judgment.

“Great Weight” to the Written Report of the ANCs

The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

As no ANC submitted any report or testified, there is nothing to which the Commission can give great weight.

Final Action

At its public meeting on September 14, 2020, the Commission voted to take **FINAL ACTION** and to authorize the publication of a Notice of Final Rulemaking:

VOTE (September 14, 2020): 5-0-0 (Peter A. Shapiro, Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to **APPROVE**)

The complete record in the case can be viewed online at the Office of Zoning website, through the Interactive Zoning Information System (IZIS), at <https://app.dcoz.dc.gov/Content/Search/Search.aspx>.

The following amendments to the text of the Zoning Regulations are hereby adopted.

I. Amendments to Subtitle U, USE PERMISSIONS

Paragraph (g) of § 510.1 of § 510, MATTER-OF-RIGHT USES (MU-GROUP D), of Chapter 5, USE PERMISSIONS MIXED USE (MU) ZONES, of Subtitle U, USE PERMISSIONS, is amended to read as follows:

- 510.1 The following uses shall be permitted in MU-Use Group D as a matter-of-right subject to any applicable conditions:
- (a) Any use permitted as a matter of right in any R, RF, or RA zone ...²
 - ...
 - (f) Daytime care ...

² The uses of this and other ellipses indicate that other provisions exist in the subsection being amended and that the amendment of the provisions does not signify an intent to repeal.

- (g) Eating and drinking establishments uses, subject to the following conditions:
 - (1) A drive-through or drive-in operation and a food delivery service shall not be permitted; and
 - (2) A fast food establishment shall not be permitted as a matter-of-right in the MU-3 zone except that fast food establishments with no drive-through shall be permitted in Square 5912, Square 3499 (Lot 3), and Square 3664 (Lot 820) as a matter of right;
- (h) Emergency shelter ...
- ...

Subsection 511.1 of § 511, SPECIAL EXCEPTION USES (MU-GROUP D), of Chapter 5, USE PERMISSIONS MIXED USE (MU) ZONES, of Subtitle U, USE PERMISSIONS, is amended by deleting paragraphs (c), (h), and (i), by adding a new paragraph (e), by renumbering accordingly, and by revising paragraph (j), to read as follows:

511.1 The following uses in this section shall be permitted in as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the provisions of this section.

- (a) College or university uses ...
- (b) Community-based institutional facilities ...
- (c) Emergency shelter for five (5) to fifteen (15) persons ...
- (d) Entertainment, assembly, and performing arts uses ...
- (e) Fast food establishment, subject to the following conditions:
 - (1) The establishment shall be located within a multi-tenant building or shopping center; it shall not be located in a single-tenant detached building;
 - (2) No more than thirty percent (30%) of the total gross floor area of the multi-tenant building or shopping center shall be occupied by fast food establishments;
 - (3) Any refuse dumpster used by the fast food use 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 nor be within ten feet (10 ft.) of a R, RF, or RA zone;

- (4) The use shall not include a drive-through;
 - (5) The use shall be designed and operated so as not to become objectionable to neighboring properties because of noise, sounds, odors, lights, hours of operation, or other conditions;
 - (6) The use shall provide sufficient off-street parking, but not less than that required by Subtitle C, Chapter 7, to accommodate the needs of patrons and employees;
 - (7) The use shall be located and designed so as to create no dangerous or otherwise objectionable traffic conditions; and
 - (8) The Board of Zoning Adjustment may impose conditions pertaining to design, screening, lighting, soundproofing, off-street parking spaces, signs, method and hours of trash collection, or any other matter necessary to protect adjacent or nearby property;
- (f) Gasoline service stations ...
 - (g) Parking, for uses within this chapter ...
 - (h) Retail, large format, subject to ...
 - (i) Service uses permitted as a matter of right ...
 - (j) Utility (basic) uses, subject to the requirements ...
 - (k) Veterinary office or hospital ...

Subsection 511.2 of § 511, SPECIAL EXCEPTION USES (MU-GROUP D), of Chapter 5, USE PERMISSIONS MIXED USE (MU) ZONES, of Subtitle U, USE PERMISSIONS, is amended to read as follows:

511.2 Any use permitted as a matter of right in MU-Use Group D that does not comply with the required conditions for MU-Use Group D may apply for permission as a special exception, except uses involving the installation of automobile accessories or fast food establishments located in single-tenant detached buildings.

Subsection 512.1 of § 512, MATTER-OF-RIGHT USES (MU-GROUP E), of Chapter 5, USE PERMISSIONS MIXED USE (MU) ZONES, of Subtitle U, USE PERMISSIONS, is amended by deleting current paragraph (c), by renumbering paragraphs alphabetically, and by revising paragraphs (e) and (k), to read as follows:

512.1 The following uses in this section shall be permitted in MU-Use Group E as a matter of right subject to any applicable conditions:

- (a) Uses permitted as a matter of right in any R, RF, and RZ zones ...
- (b) An animal boarding use located in a basement or cellar space subject to the following:
 - (1) The use shall not be located within twenty-five feet (25 ft.) of a lot within an R, RF, or RA zone. The twenty-five feet (25 ft.) shall be measured to include any space on the lot or within the building not used by the animal boarding use and any portion of a street or alley that separates the use from a lot within an R, RF, or RA zone. Shared facilities not under the sole control of the animal boarding use, such as hallways and trash rooms, shall not be considered as part of the animal boarding use;
 - (2) There shall be no residential use on the same floor as the use or on the floor immediately above the animal boarding use;
 - (3) Windows and doors of the space devoted to the animal boarding use shall be kept closed and all doors facing a residential use shall not be solid core;
 - (4) No animals shall be permitted in an external yard on the premises;
 - (5) Animal waste shall be placed in a closed waste disposal container and shall be collected by a licensed waste disposal company at least weekly;
 - (6) Odors shall be controlled by means of an air filtration or an equivalently effective odor control system; and
 - (7) Floor finish materials and wall finish materials measured a minimum of forty-eight inches (48 in.) from the floor shall be impervious and washable;
- (c) Automobile, truck, boat, or marine sales;
- (d) College or university uses ...
- (e) Eating and drinking establishment uses, subject to the following conditions:
 - (1) A fast food establishment or food delivery service shall not be permitted within the MU-4, MU-17, MU-24, MU-25, MU-26, or MU-27 zones; and
 - (2) A fast food establishment or food delivery service in all other MU-Use Group E zones, subject to ...

- (f) Education uses, private;
- (g) Entertainment, assembly, and performing arts uses ...
- (h) Firearms retail sales establishments ...
- (i) Gasoline service station as an accessory use ...
- (j) Optical transmission node;
- (k) Retail uses, except for large format retail; provided that the off-premises beer and wine sales accessory use in the grocery store located in Square 2572, Lot 36, may continue, provided that it shall not occupy more than two thousand seventy-eight square feet (2,078 sq. ft.) of the store's gross floor area;
- (l) Service (general) uses ...
- (m) Other accessory uses customarily incidental and subordinate

Subsection 513.1 of § 513, SPECIAL EXCEPTION USES (MU-GROUP E), of Chapter 5, USE PERMISSIONS MIXED USE (MU) ZONES, of Subtitle U, USE PERMISSIONS, is amended by reordering paragraphs alphabetically and correcting paragraphs (d), (i), and (l), to read as follows:

513.1 The following uses in this section shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the following conditions:

- (a) Animal boarding uses not meeting the conditions of Subtitle U § 512.1(b), subject to ...
- (b) Animal care and animal sales uses ...
- (c) Emergency shelter for five (5) to twenty-five (25) persons ...
- (d) Fast food establishments or food delivery service eating and drinking establishments in the MU-4, MU-17, MU-25, or MU-27 zones, subject to the following conditions:
 - (1) If the use is a single tenant in a detached building;
 - (A) No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a R, RF, or RA zone, unless separated therefrom by a street or alley; and

- (B) If any lot line of the lot abuts an alley ...
- (2) Any refuse dumpster used by the establishment shall be housed in a three- (3) sided 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 or be within ten feet (10 ft.) of a R, RF, or RA zone;
- (3) The use shall not include a drive-through;
- (4) The use shall be designed and operated so as not to become objectionable ...
- (5) The use shall provide sufficient off-site parking ...
- (6) The use shall be located and designed so as to create no dangerous ...
- (7) The Board of Zoning Adjustment may impose conditions ...
- (e) Gasoline service station ...
- (f) Massage establishment ...
- (g) Motorcycle sales and repair;
- (h) Parking, for uses within this chapter ...
- (i) Retail uses that do not comply with the conditions of Subtitle U § 512.1(k);
- (j) Retail, large format, subject to the conditions of Subtitle U § 511.1(h);
- (k) Service uses ...
- (l) Utility (basic) uses ...
- (m) Veterinary office or hospital ...
- (n) Any use permitted as a matter of right in MU-Use Group E ...

Subsection 516.1 of § 516, SPECIAL EXCEPTION USES (MU-GROUP F), of Chapter 5, USE PERMISSIONS MIXED USE (MU) ZONES, of Subtitle U, USE PERMISSIONS, is amended by reordering paragraphs alphabetically and correcting a cross-reference in paragraph (f), to read as follows:

516.1 The following uses in this section shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the provisions of this section:


- (a) An Electronic Equipment Facility (EEF) ...
- (b) Where not permitted as a matter of right, a gasoline service station to be established or enlarged ...
- (c) Enlargement of an existing laundry or dry cleaning establishment ...
- (d) Where not permitted as a matter of right, any establishment that has as a principal use the administration of massages ...
- (e) Public utility pumping station ...
- (f) Retail, large format, subject to the conditions of Subtitle U § 511.1(h); and
- (g) Sexually-oriented business establishment in the MU-9, MU-21, or MU-30 zone, subject to ...

Paragraph (l) of § 518.1 of § 518, SPECIAL EXCEPTION USES (MU-GROUP G), of Chapter 5, USE PERMISSIONS MIXED USE (MU) ZONES, of Subtitle U, USE PERMISSIONS, is amended to correct a cross-reference, to read as follows:

518.1 The following uses shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the provisions of this section:

- (a) Automobile or motorcycle sales or repair ...
...
- (l) Retail, large format, subject to the conditions of Subtitle U § 511.1(h);
...

In accordance with the provisions of Subtitle Z § 604.9, this Notice of Final Rulemaking shall become final and effective upon publication in the *D.C. Register*; that is, on October 16, 2020.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING