ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA NOTICE OF VIRTUAL PUBLIC HEARING

TIME AND PLACE: Tuesday, July 21, 2020, @ 4:00 p.m.

WebEx or Telephone - Instructions will be provided on the

OZ website by Noon of the Hearing Date¹

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Z.C. Case No. 20-10 (Office of Planning - Text Amendment to Subtitle U, Use Permissions, to Reduce Restrictions on Fast Food Establishments and Prepared Food Shops)

THIS CASE IS OF INTEREST TO ALL ANCS

On May 1, 2020, the Office of Planning ("OP") filed with the Office of Zoning a report that served as a petition to the Zoning Commission (the "Commission") proposing the following amendments to Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the "Zoning Regulations," to which all references herein refer unless otherwise specified) to ease 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, M-24, MU-25, MU-26, and MU-27 zones:

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 singletenant detached buildings (MU-Use Group D)
- § 512.1 removing current limitation of 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

At its May 11, 2020, public meeting, the Commission voted to grant's 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.

The complete record in the case, including the OP report and transcript of the public meeting, 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.

Anyone who wishes to participate in this case but cannot do so via WebEx or telephone, may submit written comments to the record. (See p. 13, *How to participate as a witness – written statements*.)

PROPOSED TEXT AMENDMENT

The proposed amendments to the text of the Zoning Regulations are as follows (text to be deleted is marked in **bold and strikethrough** text; new text is shown in **bold and underline** text).

I. Proposed 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 proposed to be amended to read as follows:

- 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 ...

• • •

- (f) Daytime care ...
- (g) Eating and drinking establishments uses, except for 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 prepared food shop shall be limited to eighteen (18) seats for patrons, except in Square 5912, which shall have no limitation on seats; and
 - (3) (2) A fast food establishment shall not be permitted as a matter-of-right in the MU-3 zone except for a fast food establishment with no drive-through shall be permitted in Square 5912, Square 3499 (Lot 3), and Square 3664 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 proposed to be amended by deleting paragraphs (c), (h), and (i), by adding a new paragraph (e); and by renumbering accordingly, to read as follows:

- 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) [DELETED]
 - (d) (c) Emergency shelter for five (5) to fifteen (15) persons ...
 - (e) (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;
 - (4) (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;
 - (5 (4) The use shall not include a drive-through;
 - (6) (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;
 - (7) (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;
 - (8) (7) The use shall be located and designed so as to create no dangerous or otherwise objectionable traffic conditions; and
 - (9) (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) Prepared food shop eating and drinking establishment uses with more than eighteen (18) seats for patrons;
- (i) Retail uses otherwise permitted with conditions that do not comply with the conditions
- (i) (h) Retail, large format, subject to ...
- (k) (i) Service uses permitted as a matter of right ...
- (1) (j) Utilities Utility (basic) uses, subject to the requirements ...
- (m) (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 proposed to be amended to read as follows:

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 proposed to be amended by deleting current paragraph (c), by deleting subparagraph (d)(3), and by renumbering alphabetically, to read as follows:

- 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 ...
 - (1) (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 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 containers 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;

(m) (c) Automobile, truck, boat, or marine sales;

(b) (d) College or university uses ...

(c) [DELETED]

- (d) (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, ...
 - (2) A fast food establishment or food delivery service in all other MU-Use Group E zones, subject to ...

- (3) A prepared food shop in a MU-4, MU-17, MU-24, MU-25, MU-26, and MU-27 zone shall be limited to eighteen (18) seats for patrons;
- (e) (f) Education uses, private;
- (f) (g) Entertainment, assembly, and performing arts uses ...
- (g) (h) Firearms retail sales establishments ...
- (h) (i) Gasoline service station as an accessory use ...
- (i) (j) Optical transmission node;
- (j) (k) Retail uses, except for a large format retail uses, subject to uses; provided that the off-premises beer and wine sales accessory use may continue ...
- (k) (l) Service (general) uses ...
- (1) An animal boarding use ...
- (m) Automobile, truck, boat, or marine sales; and
- (n) 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 proposed to be amended by revising current paragraph (d) and by renumbering alphabetically, to read as follows:

- 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:
 - (m) (a) Animal boarding uses not meeting the conditions of Subtitle U § 512.1(b), subject to the following:
 - (1) The animal boarding use shall take place entirely within an enclosed building;
 - (2) Buildings shall be designed and constructed to mitigate noise to limit negative impacts on adjacent properties, including residential units located in the same building as the use.

 Additional noise mitigation shall be required for existing buildings not originally built for the boarding of animals,

- including the use of acoustical tiles, caulking to seal penetrations made in floor slabs for pipes, and spray-on noise insulation;
- (3) The windows and doors of the space devoted to the animal boarding use shall be kept closed, and all doors facing a residential use shall be solid core;
- (4) No animals shall be permitted in an external yard on the premises;
- (5) Animal waste shall be placed in closed waste disposal containers and shall be collected by a waste disposal company at least weekly;
- (6) Odors shall be controlled by means of an air filtration system or an equivalently effective odor control system;
- (7) Floor finish material, and wall finish materials measured a minimum of forty-eight inches (48 in.) from the floor, shall be impervious and washable;
- (8) External yards or other exterior facilities for the keeping of animals shall not be permitted; and
- (9) The Board of Zoning Adjustment may impose additional requirements pertaining to the location of buildings or other structures, entrances and exits; buffers, banners, and fencing, soundproofing, odor control, waste storage and removal (including frequency), the species and/or number of animals; or other requirements, as the Board deems necessary to protect adjacent or nearby property;
- (a) (b) Animal care and animal sales uses ...
- (b) (c) Emergency shelter for five (5) to twenty-five (25) persons ...
- (e) (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**

- (2) (B) If any lot line of the lot abuts an alley ...
- (3) (2) Any refuse dumpster <u>used by the establishment shall</u> 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 <u>or be</u> within ten feet (10 ft.) of a residential R, RF, or RA zone;
- (4) (3) The use shall not include a drive-through;
- (5) (4) The use shall be designed and operated so as not to become objectionable ...
- (6) (5) The use shall provide sufficient off-site parking ...
- (7) (6) The use shall be located and designed so as to create no dangerous ...
- (8) (7) The Board of Zoning Adjustment may impose conditions ...
- (d) (e) Gasoline service station ...
- (e) (f) Massage establishment
- (f) (g) Motorcycle sales and repair
- (g) (h) Parking, for uses within this chapter ...
- (h) (i) Retail uses otherwise permitted with conditions that do not comply with the conditions of Subtitle U § 512.1(k);
- (i) (j) Retail, large format, subject to the conditions of Subtitle U § 511.1(j)(h);
- (j) (k) Service uses ...
- (k) (l) Utilities Utility (basic) uses ...
- (1) (m) Veterinary office or hospital ...
- (m) Animal boarding uses ...
- (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 proposed to be amended to read as follows:

- 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:
 - (e) (a) An Electronic Equipment Facility (EEF) that does not qualify as a matter-of-right use under Subtitle U § 515.1(k) subject to the requirements of this paragraph:
 - (1) An EEF shall not occupy more than fifty percent (50%) of the constructed gross floor area of the building, unless approved as part of a planned unit development pursuant to Subtitle X, Chapter 3;
 - (2) An applicant shall demonstrate, in addition to the requirements

 Subtitle X, Chapter 9, that the proposed use will not, as a
 consequence of its design, operation, low employee presence, or
 proximity to other EEFs, inhibit future revitalization of the
 neighborhood, reduce the potential for vibrant streetscapes,
 deplete street life, or inhibit pedestrian or vehicular movement;
 - (3) In evaluating whether an EEF will have any of the adverse impacts described in Subtitle U § 516.1(a)(2), the Board of Zoning Adjustment shall consider, in addition to other relevant factors, the:
 - (A) Absence of retail uses or a design capable of accommodating retail uses in the future;
 - (B) Presence of security or other elements in the design that could impair street life and pedestrian flow;
 - (C) Inability of the EEF to be adapted in the future for permitted uses; and
 - (4) The Board of Zoning Adjustment may impose requirements pertaining to design, appearance, landscaping, parking, and other such requirements as it deems necessary to protect adjacent property and to achieve an active, safe, and vibrant street life;

- (g) (b) Where not permitted as a matter of right, a gasoline service station to be established or enlarged or a repair garage not including body and fender work, subject to the following conditions:
 - (1) The station shall not be located within twenty-five feet (25 ft.) of a residential zone;
 - (2) The operation of the use shall not create dangerous or other objectionable traffic conditions; and
 - (3) Required parking spaces may be arranged so that not all spaces are accessible at all times. All parking spaces provided under this subsection shall be designed and operated so that sufficient access and maneuvering space is available to permit the parking and removal of any vehicles without moving any other vehicle onto public space;
- (d) (c) Enlargement of an existing laundry or dry cleaning establishment that contains more than five thousand square feet (5,000 sq. ft.) of gross floor area, subject to the provisions of this paragraph:
 - (1) Any noise or odor shall not adversely affect the neighborhood;
 - (2) Dangerous or otherwise objectionable traffic conditions shall not be created; and
 - (3) The Board of Zoning Adjustment may impose additional requirements as to the location of the building and other structures, the location of equipment, and other requirements as the Board deems necessary to protect adjacent or nearby property;
- (f) (d) Where not permitted as a matter of right, any establishment that has as a principal use the administration of massages, subject to the following conditions:
 - (1) No portion of the establishment shall be located within two hundred feet (200 ft.) of an R, RF, or RA zone;
 - (2) The establishment shall be compatible with other uses in the area;
 - (3) The use shall not become objectionable because of its effect on the character of the neighborhood or because of noise, traffic, or other conditions; and

- (4) The establishment shall not have an adverse impact on religious, educational, or governmental facilities located in the area;
- (e) (e) Public utility pumping station, subject to any requirements pertaining to setbacks or screening, or other requirements the Board of Zoning Adjustment deems necessary for the protection of adjacent or nearby property;
- (a) (f) Retail, large format, subject to the conditions of Subtitle U § 511.1(j)(h); and
- (b) (g) Sexually-oriented business establishment in the MU-9, MU-21, or MU-30 zone, subject to the following conditions:
 - (1) No portion of the establishment shall be located within six hundred feet (600 ft.) of an R, RF, RA, MU-1, MU-2, MU-15, MU-16, or MU-23 zone;
 - (2) No portion of the establishment shall be located within six hundred feet (600 ft.) of a church, school, library, playground, or the area under the jurisdiction of the Commission of Fine Arts pursuant to the Shipstead-Luce Act, approved May 16, 1930 (46 Stat. 366, as amended; D.C. Official Code § 6-611.01 (formerly codified at D.C. Official Code § 5-410 (1994 Repl.)));
 - (3) No portion of the establishment shall be located within three hundred feet (300 ft.) of any other sexually-oriented business establishment;
 - (4) There shall be no display of goods or services visible from the exterior of the premises;
 - (5) The establishment shall be compatible with other uses in the area;
 - (6) The use shall not become objectionable because of its effect on the character of the neighborhood or because of noise, traffic, or other conditions; and
 - (7) The establishment shall not have an adverse impact on religious, educational, or governmental facilities located in the area.
- (c) Public utility pumping station ...
- (d) Enlargement of an existing laundry or dry cleaning ...

- (e) An Electronic Equipment Facility (EEF) ...
- (f) Where not permitted as a matter of right, any establishment that has as a principal use the administration of massages ...
- (g) Where not permitted as a matter of right, a gasoline service station ...

Paragraph (I) 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 proposed to be amended to correct a reference, to read as follows:

- 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(j)(h);

. . .

Proposed amendments to the Zoning Regulations of the District of Columbia are authorized pursuant to the Zoning Act of June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01, et seq. (2018 Repl.)).

This virtual public hearing will be conducted in accordance with the rulemaking case provisions Subtitle Z, Chapter 5 of the Zoning Regulations (Title 11, Zoning Regulations of 2016, of the District of Columbia Municipal Regulations), which includes the text provided in the Notice of Emergency and Proposed Rulemaking adopted by the Zoning Commission on May 11, 2020, in Z.C. Case No. 20-11.

<u>How to participate as a witness – oral presentation</u>

Interested persons or representatives of organizations may be heard at the virtual public hearing. All individuals, organizations, or associations wishing to testify in this case are **strongly encouraged to sign up to testify at least 24 hours prior to the start of the hearing** on OZ's website at https://dcoz.dc.gov/ or by calling Donna Hanousek at (202) 727-0789 in order to ensure the success of the new virtual public hearing procedures.

The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The Commission must base its decision on the record before them. Therefore, it is **highly recommended that all written comments and/or testimony be submitted to the record at least 24 hours prior to the start of the hearing**. The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

1. Organizations

5 minutes each

2. Individuals

3 minutes each

How to participate as a witness – written statements

Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at https://app.dcoz.dc.gov/Login.aspx; however, written statements may also be submitted by e-mail to zcsubmissions@dc.gov. Please include the case number on your submission. If you are unable to use either of these means of submission, please contact Donna Hanousek at (202) 727-0789 for further assistance.

"Great weight" to written report of ANC

Subtitle Z \S 505.1 provides that the written report of an affected ANC shall be given great weight if received at any time prior to the date of a Commission meeting to consider final action, including any continuation thereof on the application, and sets forth the information that the report must contain. Pursuant to Subtitle Z \S 505.2, an ANC that wishes to participate in the hearing must file a written report at least seven days in advance of the public hearing and provide the name of the person who is authorized by the ANC to represent it at the hearing.

FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.

ANTHONY J. HOOD, ROBERT E. MILLER, PETER G. MAY, PETER A. SHAPIRO, AND MICHAEL G. TURNBULL ------ ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY SARA A. BARDIN, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.

Do you need assistance to participate? If you need special accommodations or need language assistance services (translation or interpretation), please contact Zee Hill at (202) 727-0312 or <u>Zelalem.Hill@dc.gov</u> five days in advance of the meeting. These services will be provided free of charge.

¿Necesita ayuda para participar? Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a Zelalem.Hill@dc.gov cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

Avez-vous besoin d'assistance pour pouvoir participer? Si vous avez besoin d'aménagements spéciaux ou d'une aide linguistique (traduction ou interprétation), veuillez contacter Zee Hill au (202) 727-0312 ou à <u>Zelalem.Hill@dc.gov</u> cinq jours avant la réunion. Ces services vous seront fournis gratuitement.

참여하시는데 도움이 필요하세요? 특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면, 회의 5일 전에 Zee Hill 씨께 (202) 727-0312 로 전화 하시거나 <u>Zelalem.Hill@dc.gov</u> 로 이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

您需要有人帮助参加活动吗?如果您需要特殊便利设施或语言协助服务(翻译或口译) ·请在见面之前提前五天与 Zee Hill 联系·电话号码 (202) 727-0312, 电子邮件 Zelalem.Hill@dc.gov 这些是免费提供的服务。

Quí vị có cần trợ giúp gì để tham gia không? Nếu quí vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

ለሙሳተፍ ዕርዳታ ያስፈልማዎታል? የተለየ እርዳታ ካስፈለንዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርንም ወይም ማስተርጎም) ካስፈለንዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኤሜል Zelalem.Hill@dc.gov ይንናኙ። እነኝህ አንልግሎቶች የሚሰጡት በንጻ ነው።