

**TO:** District of Columbia Zoning Commission

**FROM:** Crystal Myers, Case Manager  
*JLS*  
Jennifer Steingasser, Deputy Director, Development Review & Historic Preservation

**DATE:** July 10, 2020

**SUBJECT:** ZC Case 20-10 – Hearing Report for Proposed Zoning Text Amendments to Subtitle U Chapters 510 to 518 for Fast Food Establishments and Prepared Food Shops in the MU-Use Group D and E Zones

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## I. RECOMMENDATION

The Office of Planning (“OP”) recommends the Zoning Commission **approve** text amendment ZC 20-10, as advertised in the public hearing notice. The proposed amendments would allow fast food establishments in the MU-3 zones and ease restrictions on prepared food shops in the low to moderate density mixed use zones: MU-3, MU-4, MU-17, MU-24, MU-25, MU-26, and MU-27. These proposed amendments would not be inconsistent with the Comprehensive Plan.

## II. SUMMARY OF PROPOSED CHANGES

- In MU-Use Group D, which covers the MU-3 zone, the proposed amendment would allow fast food establishments only in multi-tenant buildings or shopping centers and only as a special exception use. Fast food establishments in single-tenant detached buildings would continue to be prohibited.
- In MU-Use Groups D and E, the proposed amendment would remove the 18-seat limit on prepared food shops allowed as a matter of right because occupancy is already regulated by building and fire codes. In both MU-Use groups all prepared food shops would continue to be permitted as a matter of right.
- In MU-Use Group E, the proposed amendment would distinguish between fast food use as a single tenant in a detached building and fast food within a shopping center or multi-tenant building in the MU-4 zones. The amendments would relieve the 25-foot distance requirement between fast food establishments within multi-tenant buildings and shopping centers and a zone line for a R, RF or RA zone but continue to require the 25 feet minimum distance between fast food establishments and a R, RF, or RA zone line for fast food establishments located within a single-tenant detached building.
- In MU-Use Groups D and E, the proposed amendment would require trash dumpsters used by fast food establishments to be at least 10 feet away from R, RF, and RA zones.

- In U§513.1, U§516.1, U§518.1 the proposed amendment corrects cross-references and reorders the uses alphabetically.

### III. BACKGROUND

At the May 11, 2020 public meeting, the Commission voted to set down ZC case 20-10 and granted OP flexibility to work with the Office of the Attorney General (“OAG”) to refine the text and to add conforming language as necessary.

In consideration of the current public health emergency, the Zoning Commission suggested OP consider if other amendments should be made to help eating and drinking establishments. OP will review the Regulation and bring forward additional amendments as a future case if additional issues are identified.

### IV. DISTRICT AGENCIES

OP discussed the proposed text amendment changes with Department of Consumer and Regulatory Affairs (“DCRA”) and the District Department of Transportation (“DDOT”). DDOT has no objection and is pleased to see that drive-throughs would continue to be prohibited. DCRA is supportive of the proposed text and is especially supportive of making all prepared food shops matter of right uses.

### V. PROPOSED TEXT AMENDMENT

The Office of Planning requests the Zoning Commission take proposed action to approve the following text amendments to the Zoning Regulations (text to be deleted is marked with **bold and strikethrough** and new text is shown in **bold and underlined**).

#### **Proposed Amendments to Subtitle U, USE PERMISSIONS**

**Amend U § 510, MATTER-OF-RIGHT USES (MU-GROUP D), 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 ...  
...
  - (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 ...

...

**Amend U§ 511.1, SPECIAL EXCEPTION USE PERMISSIONS FOR THE MIXED USE (MU) GROUP D ZONES, 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)~~ **[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**

~~(j)~~ **(h)** Retail, large format, subject to ...

~~(k)~~ **(i)** Service uses permitted as a matter of right ...

~~(l)~~ **(j)** **Utilities Utility (basic)** uses, subject to the requirements ...

~~(m)~~ **(k)** Veterinary office or hospital ...

**Amend U§ 511.2, SPECIAL EXCEPTION USES (MU-GROUP D), 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.**

**Amend U§ 512, MATTER-OF-RIGHT USES (MU-GROUP E), 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)~~ **(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 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 ...
- ~~(e)~~ **— [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 ...
- ~~(l)~~ ~~An animal boarding use ...~~
- ~~(m)~~ ~~Automobile, truck, boat, or marine sales; and~~
- ~~(n)~~ (m) Other accessory uses customarily incidental and subordinate ....

**Amend U§ 513, SPECIAL EXCEPTION USES (MU-GROUP E), 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:

~~(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 **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 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 ...
- ~~(l)~~ (m) Veterinary office or hospital ...
- ~~(m)~~ **Animal boarding uses ...**
- (n) Any use permitted as a matter of right in MU-Use Group E ...

**Amend U§ 516, SPECIAL EXCEPTION USES (MU-GROUP 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:

- ~~(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 ...~~

**Amend U§ 518.1, SPECIAL EXCEPTION USES (MU-GROUP G), 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 ~~(j)~~**(h)**;