

## **MEMORANDUM**

**TO:** District of Columbia Zoning Commission

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

**DATE:** May 1, 2020

**SUBJECT:** ZC Case 20-XX –Setdown and Pre-Hearing Report for a Proposed Zoning Text Amendment to Subtitle U Chapters 510 to 516 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 set down for public hearing, this text amendment to Subtitle U, Sections 510 to 516. This text amendment would ease restrictions on fast food establishments and prepared food shops in the MU-3, MU-4, MU-17, MU-24, MU-25, MU-26, and MU-27, in MU-Use Groups D and E.

### **II. SUMMARY OF PROPOSED CHANGES**

After reviewing the MU-Use Group D and E chapters of the Zoning Regulations OP identified barriers and challenges on fast food establishments and prepared food shops that restrict opportunities for small businesses in areas appropriate for commercial development.

- 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 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. The 25 foot distance requirement would not apply to fast food establishments within multi-tenant buildings and shopping centers.
- 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.

These changes would not be inconsistent with the Comprehensive Plan. These proposed changes would allow more land use opportunities for smaller eating and drinking establishments to grow in the District. These uses serve as entry level employment for many people and provide for business ownership through franchise opportunities. The nature of fast food has changed significantly over the last decade with the evolution and popularity of fast casual restaurants.

This report serves as the prehearing report required by Subtitle Z § 501. OP requests the flexibility to work with the Office of Attorney General on any conforming language and to refine the proposed text as necessary.

### III. PROPOSED TEXT AMENDMENT

The Office of Planning (“OP”) proposes the amendments to the following sections of the Zoning Regulations (text to be deleted is marked with ~~strike through~~ and new text is shown in **bold and underlined**):

#### Amend Subtitle U§ 510 as follows:

510 Matter-of-Right Uses (MU-Group D)

510.1 The following uses shall be permitted in MU-Use Group D as a matter-of-right subject to any applicable conditions:...

- (g) Eating and drinking establishment 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;
  - (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) 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 (Lot 820) as a matter of right;

#### Amend Subtitle U§ 511 as follows:

511 Special Exception Uses (MU-Use Group D)

511.1 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) College or university uses that would otherwise not be permitted as a matter of right within the zone, subject to the conditions of Subtitle X;
- (b) Community-based institutional facilities for one (1) to twenty (20) persons, not including resident supervisors or staff and their families;
- ~~(c)~~ ~~[DELETED];~~
- (c) ~~(d)~~ Emergency shelter for five (5) to fifteen (15) persons, not including resident supervisors or staff and their families, subject to the following conditions: ...
- (d) ~~(e)~~ Entertainment, assembly, and performing arts uses, except a bowling alley shall not be permitted, subject to the following conditions:
  - (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) **Any refuse dumpster used by the 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) **The use shall not include a drive-through;**
    - (6) **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) **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) **The use shall be located and designed so as to create no dangerous or otherwise objectionable traffic conditions; and**
    - (9) **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 station to be established or enlarged, subject to the following conditions: ...
- (g) Parking, for uses within this chapter that are located elsewhere than on the lot on which the use is located but within the square in which the principal use is located;
- ~~(h)~~ ~~Prepared food shop eating and drinking establishment uses with more than eighteen (18) seats for patrons;~~

- ~~(h)~~ ~~(i)~~ Retail uses otherwise permitted with conditions that do not comply with the conditions;
- ~~(i)~~ ~~(j)~~ Retail, large format, subject to the following conditions: ...
- ~~(j)~~ ~~(k)~~ Service uses permitted as a matter of right with conditions that do not comply with the conditions;
- ~~(k)~~ ~~(l)~~ Utilities uses, subject to the requirements for setbacks, screening, or other requirements as the Board of Zoning Adjustment deems necessary for the protection of neighboring or adjacent property; and
- ~~(l)~~ ~~(m)~~ Veterinary office or hospital, or veterinary boarding hospital subject to the following conditions: ...

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 Subtitle U§ 512 as follows:**

512 Matter-of-Right Uses (MU-Use Group E)

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

- (d) Eating and drinking establishment uses, subject to the following conditions: ...

~~(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;~~

**Amend Subtitle U§ 513 as follows:**

513 Special Exception Uses (MU-Use Group E)

513.1 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: ...

- (c) 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 containing a zone district boundary line for a R, RF, or RA zone, 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 but the brick wall shall not be required in the case of a building that extends for the full width of its lot;**

~~(2)~~ — If any lot line of the lot abuts an alley containing a zone district boundary line for a residential zone, 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. ~~The brick wall shall not be required in the case of a building that extends for the full width of its lot;~~

**(2)** ~~(3)~~ Any refuse dumpster **used by the establishment 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;

**(3)** ~~(4)~~ The use shall not include a drive-through;

**(4)** ~~(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;

**(5)** ~~(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;

**(6)** ~~(7)~~ The use shall be located and designed so as to create no dangerous or otherwise objectionable traffic conditions; and

**(7)** ~~(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) Retail, large format, subject to the conditions of Subtitle U § 511.1~~(j)~~**(i)**;

**Amend Subtitle U § 516 as follows:**

516 Special Exception Uses (MU-Use Group F)

516.1 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) Retail, large format, subject to the conditions of Subtitle U § 511.1~~(j)~~**(i)**;

## IV. ZONING REGULATIONS

Title 11 Zoning Regulations, Subtitle G Mixed Use Zones, Chapter 4 Purpose and Intent describes the intent of the MU-3 and MU-4 zones as follows:

*400.2 The MU-3 zones are intended to:*

- (a) Permit low-density mixed-use development; and*
- (b) Provide convenient retail and personal service establishments for the day-to-day needs of a local neighborhood, as well as residential and limited community facilities with a minimum impact upon surrounding residential development.*

*400.3 The MU-4 zone is intended to:*

- (a) Permit moderate-density mixed-use development;*
- (b) Provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core; and*
- (c) Be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate bulk mixed-use centers.*

The proposed text amendment would provide more options for land intended for low to moderate density mixed-use development. It would be consistent with the intent of the MU-3 and MU-4 zones and with the MU-17, MU-24, MU-25, MU-26, and MU-27 zones which are all low to moderate density mixed-use development zones.

## V. COMPREHENSIVE PLAN

### **Comprehensive Plan Maps**

#### **Future Land Use Map**

*227.10 Low Density Commercial: This designation is used to define shopping and service areas that are generally lower in scale and intensity. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw from a broader market area. Their common feature is that they are comprised primarily of commercial and mixed-use buildings that range in density generally up to a FAR of 2.5, with greater density possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The MU-3 and MU-4 Zone Districts are consistent with the Low Density category, and other zones may also apply.*

The proposed text amendment would allow more low-density commercial options in areas designated by the FLUM map for low density commercial development.

## General Policy Map

### *225.15 Neighborhood Commercial Centers*

*Neighborhood Commercial Centers meet the day-to-day needs of residents and workers in the adjacent neighborhoods. The area served by a Neighborhood Commercial Center is usually less than one mile. Typical uses include convenience stores, sundries, small food markets, supermarkets, branch banks, restaurants, and basic services such as dry cleaners, hair cutting, and childcare. Office space for small businesses, such as local real estate and insurance offices, doctors and dentists, and similar uses, also may be found in such locations. Many buildings have upper-story residential uses.*

*225.16 Unlike Main Street Mixed Use Corridors, the Neighborhood Commercial Centers include both auto-oriented centers and pedestrian-oriented shopping areas. Examples include Penn Branch Shopping Center on Pennsylvania Avenue, S.E. and the Spring Valley Shopping Center on Massachusetts Avenue, N.W. New development and redevelopment within Neighborhood Commercial Centers must be managed to conserve the economic viability of these areas while allowing additional development, including residential, that complements existing uses.*

The proposed text amendment would allow more commercial options for properties typically located in neighborhood commercial centers. The proposal is not inconsistent with the guidance to have uses that meet the day to day needs of local residents and workers.

## Comprehensive Plan Written Elements

In its Land Use and Economic Development Elements the Comprehensive plan supports finding appropriate locations for fast food establishments and it supports small businesses and job growth in the District.

### Land Use

*Action LU-2.4.B: Zoning Changes to Reduce Land Use Conflicts in Commercial Zones As part of the comprehensive rewrite of the zoning regulations, consider text amendments that:*

- a. More effectively control the uses which are permitted as a matter-of-right in commercial zones;*
- b. Avoid the excessive concentration of particular uses with the potential for adverse effects, such as convenience stores, fast food establishments, and liquor-licensed establishments; and*
- c. Consider performance standards to reduce potential conflicts between certain incompatible uses. 312.19*

*Policy LU-2.4.9: High-Impact Commercial Uses:*

*Ensure that the District's zoning regulations limit the location and proliferation of fast food restaurants, sexually-oriented businesses, late night alcoholic beverage establishments, 24-hour mini-marts and convenience stores, and similar high impact commercial establishments that generate excessive late night activity, noise, or otherwise affect the quality of life in nearby residential neighborhoods. 312.13*

The Land Use Element cautions not to locate fast food establishments in high concentrations. The proposed text amendment would allow fast food establishments but also limit their concentration to thirty percent (30%) in low density mixed-use zones. This should reduce the possibility of them concentrating in high numbers.

### Economic Development

*The overarching goal for economic development in the District is: Strengthen the District's economy by sustaining its core industries, attracting new and diverse industries, accommodating future job growth, fostering the success of small businesses, revitalizing neighborhood commercial centers, improving resident job skills, and helping a greater number of District residents find and keep jobs in the Washington regional economy. 701.1*

*Small goods and services businesses are an important part of what makes the District's neighborhood commercial areas work. They provide full and part time employment opportunities for city residents and contribute to the city's tax base. They help sustain the diversity of neighborhood shopping areas, and enable the marketplace to respond to changing business conditions and consumer preferences. It is the city's small business proprietors that have initiated many of the District's commercial revitalization efforts, driven by a desire and commitment to upgrade their businesses, properties, and neighborhoods. 714.1*

The Economic Development chapter expresses the Comprehensive Plan's desire to provide more opportunities for small businesses and job growth. Many small businesses are fast food establishments and prepared food shops. This proposed amendment would give these businesses more opportunities to start up and grow in the District.