

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
ZONING COMMISSION ORDER NO. 11-16
Z.C. Case No. 11-16
(Text Amendment to § 721.3)
November 28, 2011

The Zoning Commission for the District of Columbia (Commission), pursuant to the authority set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2008 Repl.)), hereby gives notice of the adoption of an amendment to 11 DCMR § 721.3 (k) to exempt a single firearms retail sales establishment (FRSE) operated at the Metropolitan Police Department (MPD) at 300 Indiana Avenue, N.W., from complying with the radius limitations of that provision. Subsection 721.3 (k) (1) – (3) disallows a FRSE from being located within three hundred feet (300 ft.) of a Residence (R) or Special Purpose (SP) Zone District, a church or other place of worship, a public or private school, a public library, or a playground. MPD Headquarters is located within three hundred feet (300 ft.) of a Special Purpose (SP) Zone District.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* (DCR) on July 22, 2011, at 58 DCR 6107. The permanently adopted text differs from the language proposed. The proposed amendment would have exempted a FRSE located at any District law enforcement or licensing agency. For the reasons explained below, the Commission decided to limit the exemption to a single establishment located at MPD headquarters. Because this change merely narrows the exemption, the Commission concluded that the proposed text has not been “substantially altered” within the meaning of 1 DCMR § 310.6 and, therefore, did not re-submit the revised text as a proposed rule.

The amendment shall become effective upon the publication of this notice in the *D.C. Register*

Procedures Leading to Adoption of Amendments

On July 12, 2011, the Office of Zoning received a report that served as a petition from the District of Columbia Office of Planning (OP) made on behalf of the Office of the Deputy Mayor for Public Safety and Justice. The petition requested an amendment to § 721.3 (k) of the Zoning Regulations (11 DCMR) to exempt firearms retail sales establishments located in District law enforcement or licensing agencies from complying with the radius limitations of that provision.

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As of the date of the petition, there was no location within the District for the lawful purchase of hand guns. Only a few months before then, District residents had been 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.

Unfortunately, the sole District FFL engaged in processing the transfer of hand guns from out of state into the District lost the use of its location and ceased operations. Attempts to relocate have proved to be unsuccessful because its expenses at potential eligible locations were likely to exceed expected revenues for this low volume business.

The District government then identified locations within District agencies that could serve as the location for this business that could be offered at an affordable rate, but none met the radius requirements of § 721.3 (k). Through the OP report, the Deputy Mayor advised the Commission that only by adopting the proposed exemption on an emergency basis could the District assist in the reestablishment of a District FFL business. Once that occurred, District residents, who purchased hand guns from an out-of-state FFL, would again be able to register those hand guns for self-defense in their District homes.

At a special public meeting on July 14, 2011, the Commission set down this case for a public hearing. The Commission also took action to adopt the amendment on an emergency basis and authorized the issuance of a notice of proposed rulemaking.

The Office of the Attorney General informed the Commission that a FRSE establishment use at MPD headquarters was lawfully established through the issuance of Certificate of Occupancy number CO1102660 on July 20, 2011. Like any other certificate of occupancy, this certificate belongs to the owner of the property, not the proprietor of the business.

In response to notice given pursuant to § 13 of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10) the Commission received written reports from Advisory Neighborhood Commission (ANC) 4A and ANC 6B.

In a letter dated September 12, 2011, the Chair of ANC 4A indicated that at duly noticed meeting with a quorum present the ANC voted to support the amendment. The Chair noted that there was discussion that use of the exemption should be a last resort. The Chair of ANC 6B, in a letter dated September 14, 2011, informed the Commission that ANC 6B, having met the notice and quorum requirements, voted to support the text amendments provided that the exemption should not apply to District licensing agencies. ANC 6B believed that a FRSE use in a licensing agency could pose a control and safety hazard.

The Commission held a properly noticed public hearing on October 3, 2011. OP reported that it was now recommending a narrower proposal that would limit the exemption to only a single FRSE located at MPD headquarters.

The only witness to testify was Councilmember Phil Mendelson, who was generally supportive of the amendment, but felt that it only afforded a temporary solution. The Councilmember expressed his view that current market conditions cannot support more than one or two District FFLs and was concerned that the District might not renew the existing FFL's one-year use agreement for the MPD space. If that were to happen, Mr. Mendelson believed that the radius requirements would impede the FFL's successful relocation. He therefore requested that these limits be eliminated.

The Commission recognized that it would need to re-advertise such a proposal for a new hearing. The Office of Planning also indicated that it would have to coordinate any revised text with the Deputy Mayor for Public Safety and Justice, and with the Office of Attorney General. The Commission, therefore, decided not to take proposed action, but instead consider the issue at its next public meeting. The record was left open to receive any filings from Councilmember Mendelson and the Office of Planning.

Although the Councilmember submitted no additional information, the Office of Planning filed a Supplemental Statement by the Deputy Mayor dated October 7, 2011. The Deputy Mayor first provided revised text that reflected the narrower scope of the exemption. As to the elimination of the radius limitation, the Supplemental Statement indicated that it would be "premature to reach a judgment on that broader issue and that this is not a matter that needs to be addressed in this proceeding." The Deputy Mayor assured the Commission that after "the Mayor's office has an opportunity to analyze the broader issue fully, and if it concludes that there should be changes to the 300-foot requirement, we will present proposed text to you."

The Commission took up the matter again at its regularly scheduled public meeting held October 17, 2011. The Commission expressed discomfort in proceeding with proposed action without some certainty that the broader issue of the radius limitation would be re-examined. It did not however wish to establish a deadline for doing so. Instead, it requested that the Office of Planning share this concern with the Deputy Mayor. The Commission then voted to refer the revised proposal to the National Capital Planning Commission (NCPC) for the thirty-(30) day period of review required under § 492 of the District Charter.

The Executive Director of NCPC, through a delegated action dated October 27, 2011, found that the proposed text amendments would not adversely affect the identified federal interests, nor be inconsistent with the Comprehensive Plan for the National Capital.

The Commission is required under § 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)) to give great weight to issues and concerns raised in the affected ANC's written recommendation. Great

weight requires the acknowledgement of the ANC as the source of the recommendations and explicit reference to each of the ANC's concerns. The written rationale for the decision must articulate with precision why the ANC does or does not offer persuasive evidence under the circumstances. In doing so, the Commission must articulate specific findings and conclusions with respect to each issue and concern raised by the ANC. *See* D.C. Official Code § 1-309.10(d)(3)(A) and (B).

As noted, the Commission received reports from ANCs 4A and 6B. The Commission notes ANC 4A's concern that an exemption from the radius requirement should be a last resort, and concludes that those circumstances existed here for the reasons discussed elsewhere in this Order. Consistent with ANC 6B's recommendation, the revised text no longer includes an exemption for District licensing agencies.

At a properly noticed public meeting held on November 28, 2011, the Commission took final action to adopt this text amendment. As indicated in the second paragraph of this notice, the text adopted differed from that contained in the notice of proposed rulemaking to reflect a modification to the petition requested by the petitioner. For the reasons also stated in that paragraph, the Commission did not submit the revised text for re-publication.

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 a single establishment operated at the Metropolitan Police Department at 300 Indiana Avenue, N.W.,” 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;

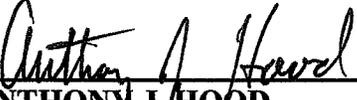
- (i) Dry goods store;
- (j) Fast food establishment or food delivery service, only in a C-2-B or C-2-C District; provided:
 - (1) No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a Residence District, unless separated therefrom by a street or alley;
 - (2) 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 a single establishment operated at the Metropolitan Police Department at 300 Indiana Avenue, N.W., 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.

On October 17, 2011, upon the motion of Commissioner May, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the petition at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Michael G. Turnbull, and Peter G. May to approve; Marcie I. Cohen and Konrad W. Schlater, not voting, having not participated)

On November 28, 2011, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Rulemaking at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Michael G. Turnbull, and Peter G. May to approve; Marcie I. Cohen and Konrad W. Schlater, not voting, having not participated)

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is on December 16, 2011.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



RICHARD S. NERO, JR.
ACTING DIRECTOR
OFFICE OF ZONING

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The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 11-16

As Secretary to the Commission, I hereby certify that on **DEC 22 2011** copies of this Z.C. Order No. 11-16 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|---|
| 1. <i>D.C. Register</i> | 6. Melinda Bolling, Acting General Counsel
DCRA
1100 4 th Street, S.W.
Washington, DC 20024 |
| 2. All ANCs (see attached list) | |
| 3. All Councilmembers (see attached list) | 7. Office of the Attorney General (Alan
Bergstein) |
| 4. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 | |
| 5. DDOT (Martin Parker) | |

ATTESTED BY:

A handwritten signature in cursive script, appearing to read "S. S. Schellin", written over a horizontal line.

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning