

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 261

Case No. 78-10

January 11, 1979

Pursuant to notice, public hearings of the District of Columbia Zoning Commission were held on June 19, 1978 and July 24, 1978, to consider amendments to the text of the D.C. Zoning Regulations. The Amendments propose to define and specify the permitted locations for "mechanical amusement machines."

Under the present interpretation of the existing Zoning Regulations, a mechanical amusement machine is permitted in various districts as an accessory use, upon the determination of the Zoning Administrator. There is no language in the Zoning Regulations that specifies how many machines are allowed per establishment, or what content (sexual or otherwise) is permitted to be displayed in the machines in various districts. The Zoning Administrator has been allowing up to three machines as an accessory use. The Zoning Regulations also indicate that an "amusement enterprise" including penny arcade or shooting gallery as a principle use is permitted in the C-3, C-4, C-M, and M Districts, as a matter of right.

At the hearing sessions, the Commission heard considerable testimony in support of and in opposition to the proposal. Testimony was presented relative to defining and differentiating between sexually-oriented and non sexually-oriented mechanical amusement machines, and determining the maximum number and location thereof.

Based on the record and the testimony presented at the hearing the Commission believes that the floor area of an establishment is an appropriate basis for determining the number of machines permitted as an accessory use.

The Commission further believes that those machines which display sexually oriented material should be permitted only in those locations where the Commission has already determined that sexually oriented business establishments are to be permitted. The Commission further believes that it would be appropriate to allow existing mechanical amusement machines which have been installed in compliance with existing licensing requirements to be continued if the number of such machines is reasonably close to the number to be permitted under the revised regulations adopted by this order.

The Commission notes that the proposed amendment was referred to the National Capital Planning Commission under the terms of the District of Columbia Self-Government and Governmental Reorganization Act and that the NCPC reported that the proposed amendment would not have a negative impact on the interests or functions of the Federal Establishment provided that the regulations are amended to require referral to the Planning Commission for comment those special exception establishments permitted under paragraph 5103.477 proposed to be located near Federal government facilities. As to that report, the Zoning Commission notes that the changes recommended by the Planning Commission are strictly procedural. A member of the Planning Commission or its staff sits on the Board of Zoning Adjustment, which must hold the public hearing on all special exception requests. The Zoning Commission believes that the Planning Commission member of the Board can adequately serve to make the full Planning Commission and its staff aware of all pending applications before the Board which might affect the Federal interest. The Zoning Commission therefore finds it is not necessary for the protection of the Federal interest that the change recommended by the Planning Commission be included, and further finds that the amendment as contained herein would not have a negative impact on the interest or functions of the Federal Establishment.

The Commission finds that the amendments as proposed herein are in the best interests of the District of Columbia and are consistent with the intent and purpose of the Zoning Regulations and the Zoning Act. The Commission therefore hereby orders ADOPTION of the amendments to the Zoning Regulations as described

in the document entitled "Regulations Concerning Mechanical Amusement Machines", dated January 11, 1979, a copy of which is attached hereto and made a part hereof.

Vote of the Commission taken at the public meeting held on December 14, 1978: 4-0 (George M. White, John G. Parsons, Theodore F. Mariani, and Ruby B. McZier, to approve - Walter B. Lewis, not voting)



WALTER B. LEWIS
Chairman
Zoning Commission



STEVEN E. SHER
Executive Director
Zoning Secretariat

This order was adopted by the Zoning Commission at its public meeting held on January 11, 1979 by a vote of 4-0 (Ruby B. McZier, John G. Parsons, Walter B. Lewis, and Theodore F. Mariani to adopt, George M. White not present not voting).

In accordance with Section 3.6 of the Rules of Practice and Procedure before the Zoning Commission of the District of Columbia, these amendments to the Zoning Regulations are effective on 26 JAN 1979.

REGULATIONS CONCERNING MECHANICAL AMUSEMENT MACHINES

January 11, 1979

REGULATIONS CONCERNING MECHANICAL AMUSEMENT MACHINES

1. Add the following new definition to Section 1202:

Mechanical Amusement Machine -- A machine or device offered for use by persons of all ages as a game, or for entertainment or amusement and which is activated or operated by the user, an operator or other person, or by the insertion of a coin, slug, token, plate, disk or magnetically encoded card and requiring a degree of dexterity or skill by such persons in the use of the machine or device. Such machines shall include, but not be limited to a pinball machine, flipper game, electronic video game, mechanical or electronic target game, or other similar machine or device, but shall not include small kiddie rides, or juke boxes.

2. Amend Paragraph 3101.56 to permit amusement machines as accessory to college or university use, by adding the following at the end of the paragraph:

including mechanical amusement machines which are necessary to uses specified in Paragraph 3101.46, subject to the provisions of Sub-section 7601.6.

3. Amend Paragraph 3104.53, to permit amusement machines as accessory to private club by adding the following to the end of the paragraph:

including mechanical amusement machines which are accessory to uses specified in Paragraph 3104.39, subject to the provisions of Sub-section 7601.6.

4. Amend Paragraph 3105.54, to permit amusement machines as accessory to hotel by adding the following to the end of the paragraph.

including mechanical amusement machines which are accessory to uses specified in Paragraph 3105.34, subject to the provisions of Section 7601.6.

5. Amend Sub-section 4101.6 (SP Districts) as follows:

Permit amusement machines as accessory to college or university, hotel or office and commercial adjuncts to a hotel, by

- a. Substituting the following for existing Paragraph 4101.62:

Mechanical amusement machines which are accessory to uses specified in Paragraphs 4101.43, 4101.44 and 4101.61 but in the case of Paragraph 4101.61 only as to a hotel, subject to the provisions of Sub-section 7601.6.

b. Renumbering existing 4101.62 to 4101.63

6. Permit amusement machines as accessory to hotel, retail uses, restaurant or private club, boat club and college or university in a Waterfront district, by

Adding to the end of Paragraph 4402.219 the following:

Mechanical amusement machines shall be permitted as accessory to uses specified in Paragraphs 4402.24, 4402.28, 4402.210, 4402.213, and 4402.37, but in the case of Paragraph 4402.37 only as to a college or university, subject to the provisions of Sub-section 7601.6.

7. Permit amusement machines as accessory to hotel, retail sales, restaurant or private club, boat club, bowling alley and college or university in the CR District by

Adding to the end of Paragraph 4502.220 the following:

Mechanical amusement machines shall be permitted as accessory to uses specified in Paragraphs 4502.24, 4502.28, 4502.211, 4502.214, 4502.34 and 4502.310 subject to the provisions of Section 7601.6.

8. Permit amusement machines as accessory uses in C-1 and C-2 Districts by

Adding to the end of Sub-sections 5101.5 and 5102.6 the following:

Mechanical amusement machines shall be permitted as an accessory use subject to provisions of Sub-section 7601.6.

9. Permit amusement machines as accessory uses by

Adding to the end of Sub-sections 5103.5 (C-3 District) 5104.5 (C-4 District), 5105.5 (C-5 (PAD) District), 6102.35 (CM District) and 6102.33 (M District) the following:

including mechanical amusement machines subject to the provisions of Sub-section 7601.6.

10. Add a new Sub-section 7601.6, establishing limits on the number of amusement machines as accessory uses, to read as follows:

7601.6 Provisions applicable to accessory mechanical amusement machines.

7601.61 Where a person seeks to offer or provide more than

three mechanical amusement machines as an accessory use, such person shall first provide a dimensioned drawing, drawn to scale and certified as to accuracy by the owner of the business. The drawings should show the floor area of the entire establishment including the area to be devoted to the use of the mechanical amusement machines and the percentage of the establishment or facility to be devoted to the use of such mechanical amusement machines. Such a scaled drawing is intended to provide the Zoning Administrator with the data necessary to make the appropriate review as required in Paragraph 7601.62.

7601.62 Where mechanical amusement machines are permitted as accessory uses, such machines shall not exceed the following:

7601.621 In an establishment or facility of less than 2,000 square feet more than five percent of the floor area of such establishment or a maximum of three such machines;

7601.622 In an establishment or facility of 2,001 to 4,000 square feet more than five percent of the floor area of such establishment or facility or a maximum of five such machines;

7601.623 In an establishment or facility of more than 4,000 square feet, more than five percent of the floor area of such establishment or a maximum of ten such machines.

7601.63 Such machines shall not be used to display specified sexual activities or specified anatomical areas, except that in the C-3-B, C-4 and C-5 (PAD) Districts, display of specified sexual activities or specified anatomical areas in mechanical amusement machines may be permitted if approved by the Board of Zoning Adjustment in accordance with Paragraph 5103.47 or 5104.45.

7601.64 The provisions of Chapters 3,4,5 and 6 and Section 8104 of Chapter 8 shall not prohibit, nor be construed to prohibit, the continued use or operation of mechanical amusement machines as accessory uses in such numbers and locations as have been licensed on or after October 31, 1977 by the Government of the District of Columbia, even though such machines as accessory uses do not otherwise conform to these regulations, provided that the numbers of such machines do not exceed by more than fifty percent of the maximum number of machines otherwise permitted by the requirements of Paragraph 7601.62