

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

IN THE MATTER OF:

HEARING ACTION: OFFICE OF
PLANNING - TEXT AMENDMENT TO
REGULATE ESTABLISHMENT OF A
FIREARM RETAIL SALES
ESTABLISHMENT USE
(EMERGENCY ACTION REQUESTED)

Case No.:
08-20

Monday, September 29, 2008

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

The Public Hearing of Case No. 08-20 by the District of Columbia Zoning Commission convened at 8:00 p.m. in the Office of Zoning Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, Anthony J. Hood, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD Chairperson
MICHAEL TURNBULL Commissioner
 (FAIA) (OAC)
PETER MAY Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN Secretary
DONNA HANOUSEK Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER
JOEL LAWSON
ARLOVA JACKSON

OFFICE OF THE ATTORNEY GENERAL:

MARY NAGELHOUT, ESQ.

This transcript constitutes the minutes from the Public Hearing held on September 29, 2008.

TABLE OF CONTENTS

WELCOME:

Anthony Hood 4

ZC CASE NO. 08-20 - Office of Planning Text
Amendment to Regulate Establishment of a
Firearm Retail Sales and Establishment Use
(Emergency Action Requested): 6

OFFICE OF PLANNING:

Arlova Jackson 6

WITNESS:

Mitchell Berger 11

DC WATCH:

Dorothy Brizill 30

COUNCIL MEMBER:

Phil Mendelson 43

SET FOR DECISION - NOVEMBER 20, 2008: . . . 76

ADJOURN:

Anthony Hood 77

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1 P-R-O-C-E-E-D-I-N-G-S

2 8:21 p.m.

3 CHAIRMAN HOOD: Okay. Moving
4 right into our second case for the night.
5 Again, I'm joined by Commissioner May and
6 Commissioner Turnbull, Office of Zoning staff,
7 Ms. Schellin, Ms. Hanousek, the Office of
8 Planning staff, Ms. Steingasser and Ms.
9 Jackson and Ms. Nagelhout, okay, from the
10 Office of Attorney General, and Mr. Lawson.

11 This proceeding also is being
12 webcast by a Court Reporter -- I mean, being
13 recorded by a Court Reporter and is also
14 webcast live. The subject of this evening's
15 second hearing is Zoning Commission Case No.
16 07-08A. This is a request by the Office of
17 Planning for Text Amendments to Zoning
18 Regulations.

19 Notice of today's hearing was
20 published in the DC Register on August 8, 2008
21 and copies of the announcement are available
22 to my left on the wall near the door. The

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1 hearing will be conducted in accordance with
2 the provisions of 11 DCMR 3021 as follows:

3 Preliminary matters, presentation
4 by the Office of Planning, report of other
5 Government agencies, report of the ANC, which
6 is all of them across the city, organizations
7 and persons in support, organizations and
8 persons in opposition.

9 The following time constraints
10 will be maintained in this hearing:
11 Organizations 5 minutes, individuals 3
12 minutes. Again, the Commission reserves the
13 right to change the time limits for
14 presentation, if necessary, and notes that no
15 time shall be ceded.

16 When presenting information to the
17 Commission, please, turn on and speak into the
18 microphone. Also upon coming forward, please,
19 fill out two witness cards and give to the
20 reporter sitting to my right.

21 The decision of the Commission in
22 this case must be based exclusively on the

1 public record. The staff will be available
2 throughout the hearing to discuss procedural
3 questions. Please, turn off all beepers and
4 cell phones, so not to disrupt this
5 proceeding.

6 At this time, we will consider any
7 preliminary matters. Does the staff have any
8 preliminary matters?

9 MS. SCHELLIN: No, sir.

10 CHAIRMAN HOOD: Okay. With that,
11 we will go to the petitioner, the Office of
12 Planning. Ms. Jackson?

13 MS. JACKSON: Good evening, Chair
14 Hood and Members of the Commission. For the
15 record, my name is Arlova Jackson and I'm a
16 Development Review Specialist with the
17 District of Columbia Office of Planning.

18 Zoning Commission Case No. 08-20
19 is for a Text Amendment to the Zoning
20 Regulations to regulate firearm sales by
21 permitting them only as a special exception
22 use in certain Districts.

1 The Office of Planning is
2 requesting that the Zoning Commission adopt
3 the following text amendments adding a
4 definition of firearms, firearms retail sales
5 establishments and firearms dealer amending
6 Chapters 5 through 9 to permit firearm retail
7 sales establishments as a special exception
8 use in the C-3-C/C-4/C-5 District and not
9 permitting firearm retail sales establishments
10 as a principal or accessory use in any other
11 District. And finally, amending Chapter 2 to
12 prohibit firearm dealers as home occupations.

13 The Office of Planning initiated
14 emergency text amendments on July 28th in
15 response to a recent Supreme Court decision
16 that invalidated some of the District's laws
17 regulating handgun ownership. These changes
18 were adopted on an emergency basis that
19 evening and have been in effect ever since.

20 In the meantime, the staff has
21 continued to research how other communities
22 are regulating firearm sales, the results of

1 which are summarized in the table included in
2 the staff report. OP staff have also met with
3 representatives from the Department of
4 Consumer and Regulatory Affairs, the
5 Metropolitan Police Department and the Office
6 of the Attorney General to discuss all the
7 efforts the District is currently undertaking
8 to comply with the Supreme Court hearing and
9 has subsequently suggested some changes to the
10 text.

11 The changes we are suggesting
12 since this was set down include the following:

13 Adding a definition of the term
14 firearm dealer and with that prohibiting
15 firearm dealers as home occupations.
16 Currently, firearm dealers are allowed to
17 operate as an office use within any District
18 that allows such uses. And the current home
19 occupation rules have explicit list of uses
20 that are not allowed, but include office use
21 as among the permitted ones.

22 So without a statement to the

1 contrary, a home office for a firearms dealer
2 currently would be permitted under the
3 regulations.

4 The second change is to eliminate
5 the requirement that a firearms retail sales
6 establishment must be located on the ground
7 floor of a building. After discussions with
8 MPD, we decided that requiring stores to be on
9 the ground floor could potentially cause more
10 harm than good by making access to guns easier
11 for theft.

12 So we have removed the limitation
13 of where a gun store may be located within a
14 building. And we have also removed somewhat
15 redundant requirements for Office of Planning
16 review, since the proposed approval process is
17 via a special exception, Office of Planning
18 would automatically participate in a review
19 and we felt that requirement wasn't necessary.

20 The only other changes were minor
21 ones to ensure consistency in the use of terms
22 throughout the text. And other than that, we

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1 aren't suggesting any changes to the amendment
2 that was proposed at setdown.

3 To conclude, the Office of
4 Planning requests adoption of the requested
5 text amendment as revised and will take any
6 questions you have, at this time.

7 CHAIRMAN HOOD: Okay. Before we
8 ask our questions, I'm going to ask, and I
9 want to make this a combination, Mr. Berger,
10 if you will come forward? And I hope I don't
11 get in trouble, but there are reasons that I
12 need to do this, so I'm going to ask you to
13 come and give us your testimony. And everyone
14 else, please, indulge us.

15 I know others want to come right
16 away, but there is an issue that needs to be
17 taken care of. We're not bad folks down here.
18 Is Mr. Berger representing a group?

19 MR. BERGER: No. Just myself.

20 CHAIRMAN HOOD: Okay. Have a seat
21 and introduce yourself, address, and you may
22 begin.

1 MR. BERGER: My name is Mitchell
2 Berger. I'm a resident of Maryland. I live
3 at 1414 Flora Terrace in Silver Spring,
4 Maryland. The ZIP Code is 20910. Since I
5 have submitted a written statement, I'm just
6 going to summarize its main points.

7 I want to draw the Board's
8 attention particularly to the exhibit that you
9 will see on your last page. And I'm -- just
10 briefly, I'm an old enforcement attorney. I
11 used to work at DCRA. I worked on some cases
12 you might be familiar with, the Solid Waste
13 Transfer Stations.

14 CHAIRMAN HOOD: That's where I
15 know you from. Okay.

16 MR. BERGER: Yes, yes. And I see
17 some of the same problems in this, in the
18 proposed text amendments that I saw with the
19 trash transfer stations. And I know there is
20 someone in some Government office somewhere
21 who is going to be put in the same position
22 that I was put in years ago and I'm hoping to

1 give the Board a little guidance to avoid
2 that.

3 I think it's proper to regulate
4 these gun stores, but I think the Board --
5 that the Office of Planning in its report has
6 missed the historical context. At one point
7 in time in the District of Columbia, you could
8 buy a gun in a hardware store or a sporting
9 goods store or even in Sears, that's a
10 department store.

11 Now, when you have the Federal
12 Government says you can't sell -- when you
13 have the District Government who says you
14 can't sell guns anywhere any more in the
15 District, because we have restricted the
16 definition so tightly that even simple 22
17 caliber rifles are now considered to be
18 machine guns.

19 When you do that and you cut off
20 that persons's use so they can't sell guns any
21 more, have they abandoned the use when the
22 Supreme Court comes back 32 years later and

1 says you've got it all wrong, those aren't
2 machine guns. You do have a right to own and
3 buy guns in the District of Columbia.

4 And so what happens to all of
5 those uses and God knows there's probably not
6 many of them, but we know there are those CO
7 hunters who go around looking for this kind of
8 thing and they will find some old hardware
9 store or some old sporting goods store or
10 somewhere in the District of Columbia that
11 used to sell guns prior to 1976 and they will
12 say we have the right to renew the use.

13 And there is nothing in the
14 proposed text amendments that deals with that.
15 Similarly, the text amendments include the
16 same kind of buffer zone that are therefore
17 sexually-oriented businesses. And also the
18 review by the Zoning Commission as a special
19 exception, as it would be for sexually-
20 oriented businesses or solid waste transfer
21 stations.

22 There is nothing in the record

1 anywhere that I could find that shows that gun
2 stores have the same adverse impact that a
3 sexually-oriented business or a solid waste
4 transfer station has. There has to be a
5 finding of fact. So that way when someone
6 comes in and challenges this and runs into
7 court, they are going to say where is the
8 finding of fact by the Zoning Commission that
9 these kinds of stores have those kind of
10 diverse impacts?

11 It's not there. It can't find it.
12 Now -- oh, I guess my --

13 CHAIRMAN HOOD: Do me a favor,
14 just take another minute and give us your
15 closing thought. I'm going to do that with
16 everyone.

17 MR. BERGER: And so I think in my
18 statement, I proposed -- tried to think rather
19 exclusionary/inclusionary. Why not have a
20 requirement that a gun shop be within 1,500 or
21 2,500 feet of a police station? That way
22 someone going to buy a gun, if there's a

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1 problem, there is a police department right
2 nearby.

3 Think of it in that -- in those
4 terms and then you need a couple of things.
5 You're going to restrict the areas where gun
6 stores can be. And but you are going to do it
7 in a way that is going to withstand scrutiny
8 by a court somewhere. That's my closing
9 thought. And also, I'm retired now on
10 disability. I would be happy to help the
11 Zoning Commission in any way I could to try to
12 frame something that is going to work and
13 avoid going into court.

14 Because you not only have to worry
15 about Congress, Congress -- the Senate can
16 stop what the House of Representatives does,
17 but there is nobody in the Congress that can
18 stop what a Judge of the Superior Court does.
19 And we ran into a lot of that when we were
20 doing the solid waste transfer facilities.
21 And that's something that you have to keep in
22 mind when you adopt text amendments.

1 CHAIRMAN HOOD: Okay. Thank you.
2 Thank you very much. I think the best
3 vehicle, as you know, Mr. Berger is to work
4 with the Office of Planning --

5 MR. BERGER: Um-hum.

6 CHAIRMAN HOOD: -- in the crafting
7 of that language, because I will tell you
8 someone who worked on the solid waste from a
9 community perspective, you may remember, that
10 300 foot and 500 buffer never did anything.
11 And I can assure you that that was -- and it's
12 actually still existing today.

13 I don't know how long you have
14 been retired, but I work with --

15 MR. BERGER: Since 1999.

16 CHAIRMAN HOOD: Okay. So we
17 worked on that start at least in the early
18 '90s in Ward 5. Okay. It's good to see you,
19 Mr. Berger. Let me ask my colleagues if they
20 have any questions. Okay. Let me also thank
21 you for coming down. Is there anyone else who
22 needs special accommodation? If you do, you

1 can come up now. Okay.

2 Okay. Let's go to our questions
3 to the Office of Planning. Mr. Turnbull?

4 COMMISSIONER TURNBULL: I guess my
5 question is maybe she could respond to our
6 last individual regarding findings of fact or
7 how you see that or whether you feel that
8 something has been brought up that we need to
9 maybe tighten the regulations.

10 MS. JACKSON: We're happy to take
11 a look at this, but I'm not prepared to
12 respond to that tonight. We did vet our
13 proposed regulations through OAG, both through
14 their Land Use and through the Litigation
15 Divisions that have worked on the handguns
16 issue. So but we are happy to take a look at
17 Mr. Berger's paper and appreciate his
18 assistance or help, his offer of assistance.

19 CHAIRMAN HOOD: Let me just
20 interject and ask this quick question. During
21 the setdown, one of the questions I asked was
22 -- I see in the report we have best practices.

1 But in the '70s, apparently, the city -- the
2 handgun law was not instituted at that time
3 and people were able to obtain and have
4 possession of handguns and guns period.

5 And I wanted to know what did we
6 do in the '70s? And I think I asked that
7 question at the setdown. Have we found out
8 what we did in the '70s?

9 MS. JACKSON: I did not.

10 MS. STEINGASSER: There was no
11 zoning action, at that time.

12 CHAIRMAN HOOD: Right. But I
13 mean, how did they exist? And I guess I just
14 need -- maybe can we --

15 MS. STEINGASSER: Just had to look
16 to OAG about the licensing issues, but from a
17 zoning standpoint, the regs were silent.

18 COMMISSIONER MAY: So it was
19 treated as sporting goods or whatever.

20 MS. STEINGASSER: I don't know.

21 COMMISSIONER MAY: Yeah.

22 CHAIRMAN HOOD: Fortunately, I was

1 in nursery school, so I don't know. If we
2 could find out about that, I'm just curious of
3 what happened before the law was implemented.
4 Okay. Mr. Turnbull, I didn't mean to cut you
5 off.

6 COMMISSIONER TURNBULL: No, no,
7 that's fine. I guess I'm just getting back to
8 Mr. Berger's comments and, you know, I didn't
9 mean to thrust this upon you tonight and say
10 get -- but I mean, it's just interesting that
11 if a sporting goods store -- I mean, I'm
12 assuming by the way the intent -- the
13 regulations are being written now that they
14 did want to sell hunting guns, they would have
15 to then apply for a special exception. That's
16 the intent that I'm reading into it now in
17 order to sell guns.

18 MR. LAWSON: I think it might
19 depend -- if -- are you talking about under
20 the OP proposal?

21 COMMISSIONER TURNBULL: Well,
22 that's what I mean, yes. Looking under the OP

1 proposal, I'm assuming that if you had a
2 sporting goods store now and they suddenly
3 said oh, now, we can sell guns, because we're
4 allowed to, that they would have to go for a
5 special exception. That's your intent.

6 MR. LAWSON: If they are located
7 within one of the zones.

8 COMMISSIONER TURNBULL: Within one
9 of the zones, right.

10 MR. LAWSON: Whereas proposed to
11 be otherwise they would have to ask. I
12 suppose in theory, they could ask for a use
13 variance and request permission to carry out
14 a business that is otherwise now prohibited in
15 the zone that they are in.

16 COMMISSIONER TURNBULL: Okay.

17 COMMISSIONER MAY: Yeah, I guess I
18 would -- I am curious about this notion that
19 there would be some sort of grandfather
20 ability to -- you know, if guns were once sold
21 in a, you know, hardware store or something
22 like that, that somehow there is some right to

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1 continue to do so, that we are not -- or
2 that's not being addressed.

3 I'm not sure that this is the
4 right way that that can be addressed. It may
5 be a licensing issue that is, you know,
6 completely separate from us, but it would be--
7 I think that's something that we -- it would
8 be good to check out. So I'm sure you can
9 talk to Mr. Berger about that.

10 MR. LAWSON: Sure. We would be
11 happy to confer now with the Zoning
12 Administrator's office, but my understanding
13 is that the general rule in DCRA is that if a
14 use is discontinued for more than three years,
15 it's no longer a grandfathered use.

16 COMMISSIONER MAY: Right.

17 MR. LAWSON: As far as I know,
18 that would apply in this case, but we would be
19 happy to confirm that.

20 COMMISSIONER MAY: Yeah, I think
21 what makes it exceptional in this circumstance
22 is that there was the intervening law that

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1 made it illegal conceivably for that period of
2 time, but if you could clarify that, that
3 would be really terrific.

4 MS. STEINGASSER: We will talk to
5 the Zoning Administrator. It's also my
6 understanding that unless it is called out
7 specifically on a Certificate of Occupancy,
8 you can't claim renewal of a particular use.

9 COMMISSIONER MAY: Okay. All
10 right.

11 MS. STEINGASSER: So without a
12 zoning category or classification for it to
13 have gotten that Certificate of Occupancy, we
14 will ask the Zoning Administrator on that.

15 COMMISSIONER MAY: Okay. Great.
16 Now, you know, I had raised a question earlier
17 about why we even need to sell guns and I got
18 an answer, I think, from OAG. I'm not
19 entirely satisfied with that notion, because
20 it seems to me that the ability to own a gun
21 and the ability to buy a gun are probably two
22 separate things.

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1 But I do appreciate all of the
2 research that went into the best practices and
3 to get a sense of, you know, what is happening
4 in other jurisdictions. I thought that was
5 very helpful to understand that.

6 I guess I still have a question
7 and I don't believe it was addressed in your
8 report, but maybe I just missed it about the
9 mechanics of buying a gun and taking it home
10 and whether, you know, under the -- whatever
11 other regulations are being put into place,
12 will people have the ability to go into, you
13 know, an approved gun selling shop, buy the
14 gun and just take it home on the subway or do
15 they have to keep it in the locked trunk of
16 their car until they get it to their home?

17 I mean, you know, what's the --
18 how does all that work? And I think -- I
19 tried to raise these questions earlier. I'm
20 not sure they were answered.

21 MS. STEINGASSER: I am afraid they
22 are just beyond the scope of zoning.

1 COMMISSIONER MAY: Right.

2 MS. STEINGASSER: So I --

3 COMMISSIONER MAY: But it has
4 parking implications and that's the only
5 reason I asked that. Is that, I mean, do you
6 have to -- if the only way that a gun can be
7 transported home is in the locked trunk of a
8 car --

9 MS. STEINGASSER: Um-hum.

10 COMMISSIONER MAY: -- then don't
11 you -- shouldn't there have to be a
12 requirement that there be parking?

13 MS. STEINGASSER: Well, yes. The
14 assumption -- well, let me retract the yes.
15 There is an assumption that these uses would
16 have a parking standard. And if we didn't
17 offer one at a standard retail rate, then that
18 -- we're missing that. There should be a
19 parking standard.

20 COMMISSIONER MAY: Okay.

21 MS. STEINGASSER: That would be
22 the same as retail.

1 COMMISSIONER MAY: I don't recall
2 one being there, but it's a complicated set.
3 Is there any -- you don't know off the top of
4 your head. I just think that parking needs to
5 be addressed, I guess, is really what --

6 MS. STEINGASSER: I think you can
7 establish a parking requirement, but the
8 transporting of the --

9 COMMISSIONER MAY: Oh, I agree.

10 MS. STEINGASSER: -- weapon is
11 more of a licensed policing issue than it is
12 a zoning issue.

13 COMMISSIONER MAY: I agree. It's
14 only because it has the implication --

15 MS. STEINGASSER: Right.

16 COMMISSIONER MAY: -- the
17 potential implication for parking that it
18 becomes zoning, from my perspective.

19 MR. LAWSON: Sure. There would be
20 a parking requirement, because there is that
21 catchall phrase in the parking regulations of
22 a certain number of parking spaces per square

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1 foot of retail space. And I think that's one
2 parking space for every -- it's either 300 or
3 600 square feet.

4 So that would be the fall-back
5 position, but we could look to see whether or
6 not that's an appropriate amount. I would
7 guess that it's probably not a bad figure to
8 be using.

9 COMMISSIONER MAY: Yeah.

10 MR. LAWSON: So --

11 COMMISSIONER MAY: Well, I would
12 hope that there's like a minimum of one or
13 something like that and then, you know --

14 MR. LAWSON: Right.

15 COMMISSIONER MAY: -- above and
16 beyond that it's per 300 or 600 square. I
17 mean, I don't know if you can have a gun shop
18 that's less than 300 square feet, but who
19 knows.

20 MR. LAWSON: Who knows.

21 COMMISSIONER MAY: All right.

22 That was my only real question. Thanks.

1 CHAIRMAN HOOD: Okay. Again, I
2 want to comment on the best practices. But
3 let me ask again, I look through the
4 requirements what we have here, is there any
5 major differences? And I know the Council is
6 grappling with some legislation. I will tell
7 you I'm not too familiar with all they are
8 dealing with.

9 But to your knowledge, is there
10 anything in these regulations, our Zoning
11 Regs, which conflict with what the City
12 Council is working with?

13 MS. JACKSON: Well, I believe the
14 Council is working on establishing both a fee
15 structure and a process for the licensing and
16 making sure, generally, that they repeal the
17 ban for handguns. We did meet with
18 representatives from several agencies that are
19 all working on various aspects of that to try
20 to ensure that there weren't any conflicts.
21 So I believe we have taken care of that.

22 CHAIRMAN HOOD: So I guess should

1 the Commission hold off, to the best of your
2 knowledge, any action until we get
3 confirmation or assurance on which way the
4 legislator is moving?

5 MS. JACKSON: I wouldn't say so.
6 I think what we are trying to do is establish,
7 facilitate a process for the sale and what the
8 other agencies and the Council are working out
9 is more about the licensing requirement and
10 making sure that we're in compliance with the
11 recent ruling, so they work together, but
12 regardless of what they come up with as a
13 process.

14 CHAIRMAN HOOD: Okay. And my last
15 question, and I'm looking here on the chart
16 where you talk about other areas of best
17 practices. I know they talk about firing
18 ranges. Is that going to lead -- is that
19 considered an I equation here in the District?

20 MS. JACKSON: We did not include
21 firing ranges in the list of uses.

22 CHAIRMAN HOOD: So what happens?

1 They have to go to Maryland or Virginia? How
2 are people going to practice? I don't know if
3 that's for another form, but that's -- I don't
4 know. How are we going to work that, because
5 -- having a gun and no practice?

6 MS. JACKSON: Well, I just --
7 prior to the setdown, I did just an Internet
8 search and found within -- I think 10 within
9 a 20 mile radius. I mean, there are several
10 other options in the area. If you would like
11 for us to consider it, we can.

12 CHAIRMAN HOOD: I guess we're just
13 delving to see if that's going to be an issue,
14 which I think it is, at some point. I don't
15 know if it's proper for the Zoning Commission,
16 but possibly I think it is, at some point.

17 Okay. I'm going to ask Ms.
18 Brizill, because I know she has been waiting,
19 and I see we have the Honorable at-large
20 Council Member Phil Mendelson. If we can get
21 you right after Ms. Brizill, I know your
22 schedule is -- if you want to come to the

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1 table, Ms. Brizill, that will be great.

2 She has been so patiently waiting
3 for us since about 6:00. Okay. And let me
4 ask, is there anyone else here who wants to
5 testify either as a proponent or opponent to
6 this case? Okay. Ms. Brizill, you may begin.

7 MS. BRIZILL: Good evening. My
8 name is Dorothy Brizill. It's spelled B-R-I-
9 Z-I-L-L. I reside in the District of Columbia
10 at 1327 Girard Street, N.W.

11 I appreciate the opportunity to
12 come today. I am testifying both as a citizen
13 and as head of an organization called DC Watch
14 and we publish a website dcwatch.com.

15 I am neither a proponent nor an
16 opponent of the proposed regulations, which --
17 so I didn't check a box on the card. I wanted
18 to come today to raise some concerns, but let
19 me begin by saying that I have had a number of
20 family emergencies and so I have not come with
21 written testimony. If the record remains open
22 beyond this evening, I would like to submit

1 written testimony by the beginning of next
2 week.

3 Moreover, I have not had an
4 opportunity to review any of the changes Ms.
5 Jackson read into the record. Some of my
6 comments will go to some concerns I had.

7 First and foremost, let me say
8 that the purpose of today's hearing before the
9 Zoning Commission is to deal with the firearm
10 retail sales establishment issue. And it
11 amends the -- certain provisions of the Zoning
12 Regulations and includes definitions of what
13 a firearm retail sales establishment would be.

14 There is another issue, however,
15 which is not addressed in the regulations that
16 are being proposed nor has it been discussed
17 tonight. And I know Mr. Mendelson could do a
18 far better job than I can. If you seek to
19 acquire a gun in the District of Columbia, and
20 you -- right now, you would have to go outside
21 the District of Columbia to acquire that gun.

22 There is something called a

1 federally licensed gun dealer. And what you
2 would do is you would buy the gun in any
3 jurisdiction outside the District of Columbia,
4 that gun would then be transferred to what is
5 called a federally licensed gun dealer, who
6 would be that intermediary.

7 Once you were properly licensed by
8 the District Government, you could then go to
9 that gun dealer to pick up your firearm. In
10 the District of Columbia, there is currently
11 only one gentleman who is a federally licensed
12 gun dealer and he resides and operates out of
13 an apartment in Anacostia.

14 My point before the Commission
15 today is while you focus on the issue of
16 firearm retail sales establishments, you do
17 not address the issue of this term known as
18 fire -- federally licensed gun dealer.

19 Now, you can be a federally
20 licensed gun dealer and not operate a retail
21 establishment. However, if you operate a
22 retail establishment, you must be a federally

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1 licensed gun dealer. I hope I have confused
2 everybody.

3 Okay. Just very quickly, I think
4 that if you are going to go down that road to
5 address the sale and acquisition of guns, you
6 need to address both issues in your
7 regulations. The other thing I would like to
8 add is that I don't know whether or not in
9 your regulations you want to make sure that
10 either or both entities are in compliance with
11 federal laws and that you could not continue
12 to operate an establishment, if, for example,
13 you had ceased to have your license to be a
14 gun -- a federal license to be a gun dealer.

15 And you do lose your license to be
16 a federal gun dealer if, for example, you
17 change your address. So for example, the
18 gentleman in Anacostia, before the Heller
19 decision came out had moved to Anacostia,
20 moved his location to Anacostia. His license
21 was in suspension. He didn't have a license.
22 So when the Heller decision came out, no one--

1 he could not act as that third party for the
2 transfer of guns.

3 The other thing is that I
4 understand Ms. Jackson has made mention of a
5 change in the provision to deny the use of --
6 the conduct of such business as a home
7 occupation. Because I have not read the OP's
8 report, I'm not quite sure what she means.
9 But that would, in essence, I believe, put
10 this gentleman in Anacostia out of business.

11 I think that's all I had to say,
12 other than to say that I personally would
13 prefer for matters to be decided before the
14 City Council for us to know what the
15 regulatory scheme looks like, for us to have
16 some months of -- under our belt as regards
17 the implementation of the District's portion
18 of the Heller decision before the Zoning
19 Commission takes a leap into adopting
20 regulations that we will have to live with.

21 And with that, that ends my
22 comment.

1 CHAIRMAN HOOD: Let's see if we
2 have any questions. We may delve a little
3 more with the Council Member. But let me just
4 ask, does anybody have any questions for Ms.
5 Brizill? And make sure that we remember we
6 have a request to leave the record open. You
7 are well ahead of me. Okay. Mr. Turnbull?

8 COMMISSIONER TURNBULL: Thank you,
9 Mr. Chair. I think, Ms. Brizill, and it could
10 be clarified by OP, but what they were trying
11 to do with the -- they were basically trying
12 to do exactly what you said is prohibit a
13 dealer from operating out of his home.

14 Now, they specifically did not say
15 federally licensed dealer, but if that is also
16 something that has to be applied, I think OP
17 could review it. But they did talk about a
18 dealer could not -- a dealership could not
19 operate out of a home occupancy.

20 So I think OP is trying to address
21 that. And maybe they could comment further on
22 that.

1 MS. BRIZILL: You cannot be a
2 person who is this third party entity that
3 accepts the transfer. Say for example, if I
4 go to Virginia and purchase a gun --

5 COMMISSIONER TURNBULL: Right.

6 MS. BRIZILL: -- I would have to
7 have that gun sent to this gentleman in
8 Anacostia. When I was properly licensed by
9 the District of Columbia, then I could go and
10 show him my paperwork and he would give me the
11 gun.

12 COMMISSIONER TURNBULL: That's
13 correct.

14 MS. BRIZILL: Okay.

15 COMMISSIONER TURNBULL: I think
16 that's the intent of what they are trying to
17 do. And I -- it could be that they may have
18 to clarify the language a little further, but
19 I think that's the intent. Ms. Jackson?

20 MS. JACKSON: That's correct.

21 CHAIRMAN HOOD: Okay.

22 Commissioner May?

1 COMMISSIONER MAY: No questions.

2 CHAIRMAN HOOD: Okay. One
3 question for you, Ms. Brizill. You mentioned,
4 and I'm not sure I understood, that -- are you
5 saying that your opinion is that we should
6 wait until the Council gets through with what
7 they have before we adopt? Are you saying we
8 need to go ahead and move forward prior to the
9 Council?

10 MS. BRIZILL: My personal opinion
11 would be that you wait. As you know, the
12 initial Council Emergency Legislation many
13 people made their way to court saying that it
14 was not in compliance with the Heller
15 decision. Mr. Mendelson has done a yeoman's
16 job in terms of massaging the law and coming
17 up with, I think, a better regulatory scheme
18 for the District of Columbia.

19 I think Mr. Mendelson would still
20 agree it's a work in progress. And let me
21 just add one other point. I think Mr. May
22 referred to it in terms of a question to Ms.

1 Jackson. We have not addressed the issue of
2 firing ranges yet. If you are going to go
3 down this road looking at retail sales, the
4 question is what about firing ranges?

5 At a number of gun shops in
6 Virginia, for example, you just don't go in
7 and buy a gun. They have a place where you
8 can shoot it and what have you. It may not be
9 a full firing range, but they certainly have
10 a facility where you can shoot, you know, the
11 gun and see if that's what you want. You
12 know, if it's the right weight and all these
13 things.

14 So what we are talking about is
15 not only a safety issue, but it's a noise
16 issues as well. So you know, I think people
17 need to have a full appreciation and I'm no
18 student of it, but a full appreciation when we
19 say these firearm retail establishment is not
20 just a counter with guns in it. It could be
21 as part of their business have a small firing
22 range in it.

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1 And that takes us down a road that
2 I don't think the Council has fully addressed
3 nor has the Office of Planning addressed in
4 terms of saying, okay, are we going to have
5 these establishments? We need to make sure
6 that, you know, we're just not -- you know, do
7 this -- these changes in the regulations at
8 the moment, but we do a comprehensive
9 approach.

10 And we are just talking about a
11 few months to get it right, I think.

12 COMMISSIONER TURNBULL: Okay. And
13 I just want to clarify from Ms. Brizill. When
14 you do get the Office of Planning report, on
15 page 2 at the bottom under proposed text, OP
16 is proposing to amend the Chapter 1 Definition
17 199. And basically, it describes firearms
18 dealer. "Any person licensed to sell, lease
19 or transfer firearms under federal law."

20 So hopefully that addresses your
21 concern then. They are prohibiting them from
22 home use.

1 MS. BRIZILL: Well, do they
2 address the issue of this gentleman in
3 Anacostia who is in existence now, who is the
4 only federally licensed dealer in the District
5 of Columbia or would he be grandfathered in?

6 MR. LAWSON: Actually, our
7 understanding from both the representatives
8 from MPD, that we were talking to that he
9 actually operates his business out of a
10 commercial establishment, it's not a home-
11 based business, at least that's our
12 understanding from MPD.

13 MS. BRIZILL: Well, I will tell
14 you, all the people I have talked to tell me
15 he operates on the second floor of an
16 apartment building. So it may not be his own
17 personal residence, but he is operating on the
18 second floor in an apartment building.

19 MR. LAWSON: I believe that also
20 as they are working with him, they are working
21 with him on finding a new location that is in
22 a commercial establishment. We would be happy

1 to confirm that, but that's certainly our
2 understanding from MPD that he would not be
3 operating -- has not and would be -- not be
4 operating out of his residence.

5 MS. BRIZILL: Well, what makes me
6 pause is the fact that he just relocated -- he
7 just located to that establishment and had his
8 license suspended by the Federal Government
9 for several months, because he was in the
10 process of relocating. So for him to relocate
11 again means he is going to have to reapply for
12 his license to the Federal Government.

13 So, you know, I take it your
14 information is coming from MPD, but it might
15 not be totally accurate.

16 MS. STEINGASSER: It's both MPD,
17 the Office of Attorney General and our Zoning
18 Administrator have all been in contact with
19 this individual and they have assured us that
20 he would be able to continue his business and
21 that it is not in a Residential Zone.

22 MS. BRIZILL: The apartment

1 building --

2 MS. STEINGASSER: So I can't go
3 any further with that.

4 MS. BRIZILL: -- would go in a
5 Residential Zone, wouldn't it?

6 MS. STEINGASSER: Right. So our
7 assumption is he is not operating out of his
8 home. That he has -- his business license and
9 dealership license is at a commercial or
10 industrial address.

11 CHAIRMAN HOOD: Okay. Mr. Lawson
12 said they will look into that a little more
13 and that will be great and Ms. Brizill's
14 comfort level. Any other questions? Okay.
15 Thank you.

16 MS. BRIZILL: Thank you.

17 CHAIRMAN HOOD: Thank you. Let's
18 go to our Honorable Council Member at-large,
19 Phil Mendelson.

20 MR. MENDELSON: I have some
21 testimony which --

22 CHAIRMAN HOOD: You don't tell --

1 I guess we need to find out if Council Member
2 is in support or in opposition. I guess I can
3 read, so I'll figure it out shortly. Wait
4 until we all get a copy, that way we can
5 follow you. Okay.

6 MR. MENDELSON: Thank you and good
7 evening. I'm Phil Mendelson. I'm an at-large
8 Member of the Council of the District of
9 Columbia. I am particularly concerned about
10 and testifying tonight because of my position
11 as Chair of the Council's Committee on Public
12 Safety in the Judiciary.

13 As chair of this committee, I'm
14 responsible for understanding the implications
15 of the recent Supreme Court case Heller v.
16 District of Columbia and as chair of the
17 committee, I'm responsible for drafting
18 legislation revising the District's Gun
19 Control Laws.

20 I'm concerned about the proposed
21 text amendments for two reasons. First, they
22 are unduly restrictive. Second, they invite

1 challenge either in the courts or more likely
2 by Congress.

3 To give you context, on September
4 17th, the U.S. House of Representatives
5 adopted by a 266 by 152 vote a bill to rescind
6 the District's authority to legislate any gun
7 control. It was actually a repeal of some of
8 our laws as well as a prohibition of our
9 taking any further steps to regulate handguns,
10 firearms in the District of Columbia.

11 The House bill passed on September
12 17th notwithstanding the fact that one day
13 earlier on September 16th the Council had
14 adopted and that evening the Mayor had signed
15 into law legislation addressing the very
16 specific concerns that had been voiced by
17 Members of Congress, as well as by
18 constituents throughout the District of
19 Columbia.

20 That is the context in which I'm
21 concerned about Congressional -- about these
22 proposed text amendments, because of the

1 scrutiny from Congress.

2 I have observed two types of
3 response to the Supreme Court's June 26th
4 decision. First, handguns are legal. Let's
5 find the best regulation that promotes public
6 safety. This is the direction in which the
7 Council has moved.

8 The second response is to give as
9 little ground as possible, limit how many
10 handguns can be -- how many guns can be
11 registered, make it burdensome and expensive,
12 limit the purpose of registration, such as
13 only for the purpose of self-defense, but not
14 for recreation or for practice, unduly
15 restrict gun dealers and so forth.

16 Gun dealers are a critical
17 component of gun control. They are critical
18 to the District's law, because citizens may
19 acquire or transfer firearms only through
20 licensed gun dealers. Gun dealers are
21 critical to our neighboring states, because DC
22 guns used in crimes in those states are more

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1 easily traced if there are licensed District
2 gun dealers.

3 That is dealers who are required
4 to keep records under our law as a condition
5 of their license, which then that information
6 can be obtained by law enforcement. Dealers
7 are critical to federal gun control, because
8 handguns may be purchased interstate only
9 through gun dealers located in the purchaser's
10 state of residence. And that, I think, is
11 what Ms. Brizill was alluding to.

12 We have one licensed gun dealer
13 right now in the District through whom
14 residents can purchase firearms interstate or
15 bring them in interstate and that's critical
16 to gun control.

17 In short, we do not want to limit
18 gun dealers. We want them. We want them as
19 critical players in our gun control law.

20 The Office of Planning's July 25th
21 setdown report noted that the proposed
22 regulations are based on the existing Zoning

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1 Regulations pertaining to sexually-oriented
2 businesses, which are also limited by special
3 exception to the downtown area and which have
4 similar proximity requirements. This
5 comparison is unwarranted.

6 First, I am unaware of any
7 research that is showing that a regulated gun
8 dealer is a nuisance in any way that comes
9 close to sexually-oriented businesses. I am
10 unaware that gun dealers attract loitering or
11 the pandering of sex. I am unaware of a
12 statistical analysis showing that gun dealers
13 attract a higher incidence of crime, such as
14 theft, robbery and prostitution or shootings.

15 Second, you must ask what aspects
16 of a gun dealer pose a problem for the
17 community in which the dealer locates. The
18 only answer I come up with is security. This
19 problem is not locational. What I mean by
20 that is that the text amendment should address
21 security. Restricting gun dealers by zone
22 district is something else and has little or

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1 nothing to do with security.

2 Third, I find the Office of
3 Planning's examination of regulations from
4 other U.S. municipalities troubling. It is
5 very limited. It will omit several large
6 cities which I would want to compare, such as
7 Boston, New York, Chicago, Los Angeles, San
8 Francisco.

9 I might note that Boston and New
10 York are dealing with the same problems that
11 we are on the east coast with the interstate
12 traffic of illegal firearms. And New York in
13 particular has very restrictive gun control
14 laws, because of the problems that they have
15 had with gun violence in their city.

16 So it's an important city. These
17 cities on the east coast are important to
18 compare as well as the large cities I
19 mentioned, Chicago, which has strict gun
20 control, which is now in question because of
21 the Heller case, and Los Angeles and San
22 Francisco.

1 The OP analysis or OP report also
2 includes no analysis of each municipality's
3 gun control laws, so there is no understanding
4 of or ability to compare the legal
5 restrictions on gun ownership, which the
6 Zoning Regulations supplement.

7 For example, our existing law
8 right now prohibits the display of firearms
9 and requires that firearms be at all times
10 secure within a gun dealer's establishment.
11 And that would then give some comfort, I
12 think, in terms of the proximity of the
13 establishment to other uses.

14 We don't know what the law is
15 controlling guns and dealers in these other
16 jurisdictions. We know from the analysis if
17 the few cities OP looked at what the Zoning
18 Regulations are, but, for instance, Chicago,
19 which isn't looked at, has an extensive law
20 regulating firearms.

21 And I can't sit here and tell you
22 what Chicago's law is, but we know neither the

1 zoning nor we know the context, the legal
2 context. The law regarding gun control which
3 the Zoning Regulations would supplement.

4 Fourth, you should be aware of
5 past practice in the District of Columbia.
6 Research by my staff earlier today found that
7 in 1972, which was three years before our
8 current gun control statute, there were 10 gun
9 dealers in the District. Those 10 gun dealers
10 were not limited to the high density downtown
11 commercial districts being proposed in the
12 text amendments before you.

13 For instance, there was a dealer
14 at 18th and Adams Mill Road. There were
15 others at 5201 Georgia Avenue; 1812 R Street,
16 N.W.; 3172 Bladensburg Road, N.E.; 2747 Martin
17 Luther King Jr. Boulevard, S.E., the list is
18 the last page of my testimony.

19 My office looked at the phone
20 directories for five years dating back to
21 1943. It is clear that the 1958 Zoning
22 Regulations did not perceive gun dealers as a

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1 nuisance or as a special use that should be
2 limited to the highest density commercial
3 districts.

4 Rather, it appears gun dealers
5 have always been permitted as of right in
6 moderate and medium density commercial
7 districts.

8 Finally, you should know that the
9 District's current gun control law prohibits
10 the display of any firearm or ammunition in
11 windows visible from a street or sidewalk and
12 further, requires that all firearms be kept at
13 all times in a securely locked place affixed
14 to the premises.

15 Moreover, our law requires at
16 least 48 hours to purchase a firearm, so
17 nobody can walk into a gun store and expect to
18 walk out minutes later with a gun. However,
19 this fall, the Council will be adopting
20 permanent amendments to the law utilizing best
21 practices from other jurisdictions regarding
22 gun dealers.

1 While the Zoning Commission ought
2 to consider security as it moves forward with
3 text amendments, please, understand that much
4 is being done by others regarding this issue.

5 Now, I attached to my testimony
6 also a couple of pages that get more
7 technical, but the summary of them is that
8 firearm sales should be prohibited in the C-1
9 and C-2-A Districts. Permit firearms sales,
10 but with a special exception in the C-2-B
11 through C-3-A Zone Districts. The primary
12 focus of the special exception should be
13 security-related issues, unless there is some
14 other issue that is identified which I have
15 not seen in the OP report.

16 Permit firearm sales as a matter-
17 of-right in the C-3-B Zone District and above,
18 limit the firearms restriction in connection
19 to home occupations by limiting the actual
20 physical sale of firearms, because the way
21 that language is written and the way the Home
22 Occupation Regulations now apply, as I

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1 understand them, sales, that is the actual
2 physical sale, is pretty much limited.

3 And so home occupation is pretty
4 much an office use, like telephone and a desk
5 and files. And so why we would say that a
6 dealer couldn't have his files, couldn't use
7 the phone in furtherance of his dealership,
8 which is just strictly office use, in his home
9 while other commercial uses are permitted in
10 home occupation limited, that restriction
11 doesn't make sense.

12 And then finally, I think you
13 should consider reducing the 600 foot set-off
14 that is being proposed. And that concludes my
15 testimony.

16 CHAIRMAN HOOD: Okay. Thank you
17 very much, Council Member Mendelson. Let me
18 just start off by asking a question that I had
19 asked earlier. I was just wondering should
20 the Zoning Commission, and I asked this of the
21 Office of Planning also, to Ms. Brizill, hold
22 off on any action until the Council and those

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1 other groups that you were talking about have
2 formulated some type of regulations or how
3 they are proceeding in that process?

4 MR. MENDELSON: I wouldn't say
5 absolutely that the Zoning Commission should
6 hold off. But I think it has to be a
7 deliberative process and you have to be
8 mindful of what other changes we are making in
9 the law and consider the testimony, consider
10 the importance of having a dealer, consider
11 the other issues that I have mentioned in my
12 testimony.

13 The rule making process is one
14 where if you were to make a decision tonight,
15 which I know you won't, you still have to
16 publish the rules, the proposed rules for
17 comment. And so there will be some time
18 there. So I wouldn't say that you should stop
19 everything. But I think you need to be very
20 deliberative.

21 CHAIRMAN HOOD: So in other words,
22 we need to make sure, and I'm not sure where

1 the Office of Planning is with the working
2 process or what the Council is doing, that we
3 have the most current and accurate
4 information, so we can make an informed and
5 intelligent decision.

6 So that's one thing I'll be asking
7 for. The other thing is I was glad to see, it
8 brought back a little memory, I'm sure others
9 might remember more, Irvings Sport Shop. I
10 actually forgot that they were even in the
11 District. But yeah, they were. And that's
12 probably -- I know down on 10th and E, I'm
13 sure as was in this, they were a gun dealer.

14 The thrust of the way I read the
15 proposed regulations is to try to get it as
16 far away from residential areas as possible.
17 And it looks like -- and one of the questions
18 we asked of the Office of Planning early on
19 and even at setdown was what did we do in '72?
20 And this right here explains it.

21 But the one on Bladensburg Road,
22 in particular, unless there was a whole lot of

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1 development over there since this time, it's
2 very close to a residential area. And that
3 was one of the things that I asked about.

4 Okay. That's just a comment,
5 because I'm not sure what side of Bladensburg
6 Road the 3172 Block is. I'm not sure whether
7 it's on the east side or the west side. No,
8 no, is that north or south? Well, whatever it
9 is, I'm not sure what side. It's hard to
10 believe I have an orientation merit badge.

11 But I'm just not sure. I know
12 that that is right close to some residential
13 homes. So anyway, that's my comment for what
14 it's worth. Colleagues, let me open it up.
15 Any questions? You have time for a few
16 questions?

17 MR. MENDELSON: Sure.

18 CHAIRMAN HOOD: Commissioner May?

19 COMMISSIONER MAY: No. You know,
20 I think I really, really appreciate the --
21 your testimony and the analysis that has gone
22 into this. Obviously, you are a head of us in

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1 understanding and studying the problem. And
2 I especially appreciate an answer to the
3 question that I had asked at setdown, which is
4 why do we want to have gun dealers in the
5 first place? Because I didn't understand why
6 the Supreme Court decision necessarily implied
7 that we had to be able to buy and sell guns
8 within the District.

9 But now, I mean, in light of the
10 attempt to regulate the situation overall, I
11 do now feel like I have something of a
12 satisfying answer, because what I got from the
13 Office of Planning didn't -- I mean, not --
14 from the Office of the Attorney General wasn't
15 totally satisfying in that regard.

16 I don't -- I guess what -- I do
17 understand the concern and the fact that we
18 are -- you know, the Congress is looking over
19 our shoulder or the House, especially, is
20 looking over our shoulder. The act that you
21 referred to that was passed by the House
22 hasn't gotten anywhere with the Senate, as far

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1 as I know. Is that right? There is not a
2 corresponding bill?

3 MR. MENDELSON: No, the bill is
4 now in the Senate.

5 COMMISSIONER MAY: It's in the
6 Senate.

7 MR. MENDELSON: And I believe
8 something like 44 Senators wrote to the
9 majority leader, Senator Reed, asking that the
10 bill come to the floor this --

11 COMMISSIONER MAY: So it has some
12 momentum in the Senate?

13 MR. MENDELSON: Yes. Now, the
14 Senate operates under rules I don't fully
15 understand and I'm told that there are several
16 Senators who have put holds on --

17 COMMISSIONER MAY: Holds on it,
18 yeah.

19 MR. MENDELSON: -- which would
20 slow it down.

21 COMMISSIONER MAY: Yeah. There is
22 a certain Senator that is holding up almost

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1 everything that the Park Service does for
2 other reasons.

3 CHAIRMAN HOOD: I sure hope he's
4 not watching tonight.

5 COMMISSIONER MAY: No.

6 MR. MENDELSON: But my concern and
7 what I tried to say in my testimony was that
8 listening to the debate and looking at the
9 findings that were in the bill, the Members of
10 Congress among other things railed against the
11 fact that we prohibited the registration of
12 semi-automatic handguns. And the day before
13 their vote, which is to say in the middle of
14 their rhetoric, we changed the law to permit
15 the registration of semi-automatic handguns.
16 And that was no secret.

17 We had -- I had announced that I
18 would be proposing those changes a week or two
19 earlier. So they didn't care about that.
20 What was motivating a number of the
21 Congressmen and Senators was this perception
22 that we are making it very difficult. What I

1 said at the outset about two kinds of
2 reaction.

3 And one is a stingy reaction.
4 We're going to give as little ground as
5 possible. And my concern here with the
6 dealers is that if it is impossible for a
7 person to register their gun in the District
8 through a federal firearms dealer, Congress
9 will go forward with one of the provisions in
10 the bill, which is to make an exception to the
11 federal law for the District of Columbia.
12 Only the District of Columbia could you buy a
13 firearm in Maryland or Virginia and not have
14 to go through a federal firearms dealer. And
15 that would not be in our best interest.

16 COMMISSIONER MAY: Right.

17 MR. MENDELSON: So they very
18 specifically are aware of the problem with gun
19 dealers. And the one gun dealer that we have,
20 I am told, is charging \$125 to register. The
21 way the process works right now, in fact, the
22 dealer we have you can't actually buy a gun

1 from him in the sense that he has a display.
2 That's my understanding.

3 So you would go to maybe Walmart
4 in Prince George's County and you would select
5 a handgun. They would do an instant check
6 under the federal process, which is not as
7 thorough as our background check under our
8 law, but you can't, in a legal sense, buy the
9 firearm in Maryland.

10 So when you select your gun at
11 this Walmart, the dealer at Walmart then sends
12 it to the dealer in the District. And the
13 dealer in the District knows the paperwork.
14 He is licensed in the District and you
15 technically -- and you get your registration
16 and you are technically buying the gun from
17 the dealer in the District.

18 If there is no dealer in the
19 District, then legally one cannot buy a
20 handgun in Maryland, Virginia or any other
21 state in the union. And as I said, Congress
22 was looking to get around that. And that's in

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1 the bill that is pending in the Senate.

2 COMMISSIONER MAY: Okay. Thank
3 you.

4 COMMISSIONER TURNBULL: I just had
5 -- and I see your point about the dealer and
6 the -- and your -- both the home operation as
7 if it's any other typical business operation.
8 But I guess that assumes then that the dealer
9 has some other facility where he actually
10 transfers the gun to you?

11 MR. MENDELSON: Yeah, I can't
12 imagine that there would be a dealer who would
13 be a home occupation. But if there was, yes,
14 they would have a second facility where --

15 COMMISSIONER TURNBULL: Second
16 facility.

17 MR. MENDELSON: -- they would have
18 the firearms.

19 COMMISSIONER TURNBULL: So the
20 dealer in D.C. not only applies with the
21 federal laws which are not as stringent as the
22 D.C. laws, but he has to apply with the D.C.

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1 laws as well.

2 MR. MENDELSON: Correct. You have
3 to have both.

4 COMMISSIONER TURNBULL: And you
5 were -- one of your comments was to permit
6 firearm sales as a matter-of-right in C-3-B
7 and above.

8 MR. MENDELSON: Yes. See I just
9 don't see the nuisance factor around -- as
10 long as the security is required, like you can
11 do it as part of your matter-of-right
12 requirements and which we are going to address
13 somewhat in our law with regard to just we're
14 looking at best practices. Right now, we
15 require that there is no display. The
16 firearms are securely affixed in the premises.

17 As long as we address security, I
18 don't see what the nuisance is. Now, I did
19 see in the OP chart of other municipalities
20 that one of the distance limitations was from
21 areas of public assembly. And I guess the
22 thought might be well, if you had, you know,

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1 1,000 concert goers and for some reason they
2 got all riled up, somebody might break a
3 window and break-in.

4 So I could see some distance
5 there. But for instance, and I didn't put
6 this in my testimony, because I hesitate to
7 say it, but I could see why it wouldn't feel
8 right to have a gun shop right next to a
9 playground or a church. But the reality is
10 that a person isn't going to just on a whim go
11 into the gun shop, buy the gun and walk out.

12 It's a much more disconnected
13 transaction. There is a minimum of 48 hours.
14 And in fact, I believe as a practical matter,
15 it is much longer than that. We are -- not
16 only do we restrict all kinds of people from
17 registering firearms, we're looking at
18 expanding who is prohibited from buying a
19 firearm.

20 So for instance, anybody with a
21 felony record cannot buy a firearm under
22 current law. Anybody who has been

1 involuntarily committed to a mental
2 institution cannot buy a firearm. We're going
3 to expand that to include involuntary -- or
4 excuse me, voluntary commitments.

5 Of course, minors are prohibited
6 from buying a firearm under current law. We
7 are looking to expand it to prohibit anybody
8 against whom there has been a permanent
9 protective order as a result of domestic
10 violence. Now, when I say permanent, that
11 means like a year, not the temporary that you
12 can get on an ex parte basis, but one where
13 there has been an adjudication.

14 If you have had a domestic
15 violence protective order or conviction, then
16 you would not be able to purchase a firearm.
17 So we are looking at ways of -- and also we
18 are looking at expanding it to include people
19 with multiple DUI charges, because there's a
20 high correlation between multiple DUI offenses
21 and substance abuse, which is not a good
22 mixture for firearm possession.

1 So we are looking at ways to
2 restrict who can have a firearm to reduce the
3 likelihood of violence. If you do that and
4 you require security and other -- you know,
5 well, security requirements around the
6 dealers, and I just don't see where the
7 nuisance factor is. And then that goes back
8 to looking at what the practice has been in
9 the past.

10 I don't recall people complaining
11 about, I don't want to act like I have a clear
12 memory on this, a firearms store at 1806 Adams
13 Mill Road or 1812 R Street, N.W. And if
14 anything, the dealers increased. There were
15 six in 1965 and there were 10 in 1972. So it
16 doesn't seem like there were complaints.

17 What I know of the Council's
18 legislative record, we were interested in
19 restricting the ownership of guns. The
20 primary focus wasn't on the dealer as being
21 the problem. Now, maybe there is something I
22 don't know. But that's my impression.

1 So absence the dealer, the
2 nuisance factor, my recommendation is that it
3 be matter-of-right in the more dense or
4 intense Districts.

5 COMMISSIONER TURNBULL: What about
6 your other -- you made one comment. Your last
7 one is to reduce the 600 foot set-off being
8 proposed. And I know -- I'm not saying -- I
9 mean, OP makes a judgment looking at different
10 things up on what the set-off is. What is
11 your feeling on this? You, obviously, feel it
12 ought to be less than what they are --

13 MR. MENDELSON: Well, we have a
14 lot of churches, playgrounds, what are the
15 different -- the R District, of course, is all
16 over, the SP District is all over. So we --
17 the greater that restriction, the fewer places
18 these dealers can locate. And of course, the
19 fewer places they can locate, the chances are
20 it will be more expensive property and,
21 therefore, their costs will be higher.

22 Looking at that comparison table,

1 Baltimore has a 100 yard separation. Detroit
2 and Denver have no minimum distance
3 requirements. Minneapolis and Pittsburgh have
4 a 500 foot set-off. But we don't know what
5 their other laws are. If they don't have any
6 requirements around gun dealers, then that
7 makes it -- you know, I think that says more.

8 COMMISSIONER TURNBULL: But
9 getting back to one of your earlier comments,
10 too, you are actually looking for more
11 information, too, from OP regarding Chicago,
12 New York, San Francisco and what some of their
13 requirements are, too?

14 MR. MENDELSON: Yes.

15 COMMISSIONER TURNBULL: Thank you.

16 MR. MENDELSON: Thank you.

17 CHAIRMAN HOOD: Councilman, let me
18 just ask, let's see here, one of the -- and I
19 don't know if this is pertaining to the
20 legislation that you are working on, if you
21 can't talk about it, just let me know. One of
22 the letters we got from ANC-5A11, she talks

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1 about (f). And I was looking here to see
2 where it talks about all licenses shall
3 consult the Advisory Neighborhood Commission.
4 Is that somewhere? Is that in the
5 legislation?

6 MR. MENDELSON: That's not in the
7 current law.

8 CHAIRMAN HOOD: It's not? Is it
9 in -- oh, I thought it was already --

10 MS. JACKSON: I think she was
11 suggesting that it be added.

12 CHAIRMAN HOOD: Okay. Okay. Do
13 you think that you may go down that line,
14 Office of Planning may make their
15 recommendation?

16 MS. JACKSON: Well, as part of the
17 special exception process, the ANC would be
18 involved.

19 CHAIRMAN HOOD: Okay.

20 MS. JACKSON: Already.

21 CHAIRMAN HOOD: Okay. The other
22 question, Council Member, is that before you

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1 came in, we were talking about -- we know this
2 is a start. We have to deal with sales. But
3 once we sell it, we have to practice. Has
4 that -- and I asked Office of Planning. I
5 don't think we have gotten that far yet, if
6 I'm quoting it correctly.

7 Has that been discussed as far as
8 -- and I'm sure that will probably fall back
9 to zoning eventually.

10 MR. MENDELSON: Well, it is also
11 in the Council. Right now, our law -- I mean,
12 the -- we're dealing with the vestiges of a
13 very strict gun control law, which, basically,
14 didn't allow possession or use of a firearm.
15 And so for example, firing ranges if just
16 discontinued in the District, I think there
17 may be a couple.

18 I have been told that there used
19 to be a firing range in Roosevelt Senior High
20 School. I was told of another facility, I
21 can't remember now, it was a recreational --
22 I don't know if it was the Department of Parks

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1 and Recreation or Boys and Girls Club, but
2 there was a firing range in another
3 recreational facility.

4 We are going to be looking at, and
5 I don't know how the Council will vote, but I
6 know my recommendation will be that we loosen
7 the law to allow people to practice. It makes
8 no sense, in my view, to permit ownership of
9 a firearm, but not allow a person to learn how
10 to use that firearm and become proficient in
11 using that firearm.

12 So I think we have to loosen that
13 law. What we have so far adopted is a
14 loosening of the carrying provision. So it's
15 clearer now that an individual who lawfully
16 owns a gun, a registered firearm, is able to
17 transfer it for recreational purposes. But we
18 haven't completed that, but we are looking at
19 that.

20 So I do not -- the Zoning
21 Regulations surely allowed firing ranges in
22 the past, because they were around. The

1 National Rifle Association at Scott Circle had
2 a firing range in its basement. So it must be
3 allowed. You may want to look at that and see
4 if that needs to be updated at all.

5 We will be looking at it in terms
6 of a person's ability to take the firearm to
7 a firing range.

8 CHAIRMAN HOOD: Okay. Any other
9 questions? Any other questions? Okay. I
10 want to thank you Council Member --

11 MR. MENDELSON: Thank you.

12 CHAIRMAN HOOD: -- for giving us
13 great testimony, very helpful. We appreciate
14 you taking your time to come down. Is there
15 anyone else who would like to testify in
16 tonight's case?

17 Okay. Ms. Schellin, can you --
18 oh, I have the dates right in front of me.
19 Okay. The record will remain open until
20 October the 7th, if anyone has any issues,
21 please, let me know now. OP to respond to
22 filings by October the 14th. And we plan to

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1 consider this at our October 20th Public
2 Meeting. Commissioner May?

3 COMMISSIONER MAY: Yeah, Mr.
4 Chairman, you know, given the testimony that
5 we just received and the sort of point-by-
6 point issues that were raised, I would be very
7 interested in hearing what the Office of
8 Planning has to say on all of the points that
9 were raised by Council Member Mendelson. Not
10 immediately, but --

11 MS. JACKSON: Yes, we'll try not
12 to pit ourselves against the Councilman.

13 COMMISSIONER MAY: No.

14 MS. JACKSON: We will be happy to
15 respond to it.

16 COMMISSIONER MAY: I'm not pushing
17 for tonight, either.

18 MS. JACKSON: But I think most of
19 it is going to need to come from OAG, because
20 a lot of these --

21 COMMISSIONER MAY: That's fine.

22 MS. JACKSON: -- are legal

1 arguments.

2 COMMISSIONER MAY: Right.

3 MS. JACKSON: And outside of our
4 scope.

5 COMMISSIONER MAY: I just -- we
6 want to have that before we deliberate.

7 CHAIRMAN HOOD: I would agree. I
8 thought we were going to sit here and try to
9 hash it out, but it's always good to get the
10 experts advice on it.

11 COMMISSIONER MAY: Um-hum.

12 CHAIRMAN HOOD: I think he raises
13 some -- and also, Ms. Brizill, also and
14 everyone who has testified, Mr. Berger and all
15 have raised some very valuable points for us.
16 And, Ms. Nagelhout, if could do that, Ms.
17 Schellin, and Ms. Steingasser, we can kind of
18 appoint that. I don't know who is going to do
19 what.

20 MS. STEINGASSER: I think it is
21 going to be fairly difficult to do it for the
22 October meeting.

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1 CHAIRMAN HOOD: Do we have a
2 problem moving this to November?

3 MS. STEINGASSER: Maybe moving
4 this.

5 CHAIRMAN HOOD: Or a Special
6 Public Meeting? Commissioner Jeffries is not
7 here tonight, so we can do a Special Public
8 Meeting.

9 MS. SCHELLIN: Actually, I think
10 our November meeting is not too much later
11 than our October one, because October is late,
12 because of the Monday holiday.

13 CHAIRMAN HOOD: Well, just so they
14 have adequate time, maybe we could do a
15 Special Public Meeting.

16 MS. SCHELLIN: Before our November
17 meeting or after?

18 CHAIRMAN HOOD: Probably after.
19 It sounds like they may need a little time.
20 We can come down Thanksgiving night and do it.

21 MS. SCHELLIN: Okay. If we -- we
22 can leave the record open until October 27th.

1 And then allow OP two weeks after that,
2 November 10th, to respond. And we could do a
3 6:00 Special Public Meeting on November 20th.

4 CHAIRMAN HOOD: November 20th. Do
5 we have a large case --

6 MS. SCHELLIN: We have a hearing
7 that night.

8 CHAIRMAN HOOD: -- that night?

9 MS. SCHELLIN: Um, I don't think
10 it will be too bad. It's the Industrial ZRR.

11 CHAIRMAN HOOD: Can we do 5:45?
12 Is that a problem, colleagues? We probably
13 need that additional.

14 COMMISSIONER TURNBULL: We're
15 going to make sure we have to have four of us
16 here, too.

17 CHAIRMAN HOOD: Um-hum.

18 COMMISSIONER TURNBULL: We don't
19 want to -- I don't want to do it with just
20 three. We need to have --

21 CHAIRMAN HOOD: Is anybody --

22 COMMISSIONER TURNBULL: We're

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1 going to be down one.

2 CHAIRMAN HOOD: Well, is anybody
3 out yet on the 20th?

4 MS. SCHELLIN: No.

5 COMMISSIONER MAY: Well, let's aim
6 for 6:00. I mean, we probably won't finish by
7 6:30, but we didn't finish today by 6:30.

8 CHAIRMAN HOOD: No, but I just
9 hate to have the public come down and wait for
10 their hearings. But let's do 6:00 and we'll
11 go from there. Okay.

12 All right. I thank everyone for
13 your participation tonight. We appreciate all
14 the insight and useful information. And this,
15 with the dates as noted, hearing is adjourned.

16 (Whereupon, the Public Hearing was
17 concluded at 9:28 p.m.)

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