

MEMORANDUM

July 10, 2014

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, ^{8/2}Legislative Attorney

SUBJECT: Zoning Text Amendment 14-07, Accessory Commercial Kitchen – Standards

Zoning Text Amendment (ZTA) 14-07, sponsored by Councilmember Leventhal, was introduced on June 10, 2014. A public hearing on ZTA 14-05 is scheduled for July 15, 2014 at 1:30 p.m.

Councilmember Leventhal believes that accessory commercial kitchens that are 5 percent of the floor area of the tract in common ownership on which the commercial kitchen is located should be allowed. Currently, an accessory commercial kitchen is limited to 5 percent of the floor area in the building accommodating the kitchen.

The Council approved ZTA 11-08 on June 26, 2012 that allowed commercial kitchens as an accessory use in residential zones under certain circumstances.¹ A commercial kitchen is permitted only as an accessory to a service use that is permitted without a special exception; however, it is prohibited as an accessory use for home occupations, day care facilities, and adult foster care homes. Where a commercial kitchen is allowed, it must:

- (1) occupy less than 5% of the floor area of the building in which it is located;
- (2) not be used as part of an on-site eating and drinking establishment;
- (3) submit a parking plan acceptable to the Director of Permitting Services that provides adequate on-site or off-site parking for the users of the commercial kitchen during hours of operation in subsection (4); and
- (4) be used for the preparation of food for public consumption off site only between the hours of 6:00 AM and 9:00 PM weekdays; and 8:00 AM and 9:00 PM weekends.

ZTA 14-07 would only change item number (1) above. The single change would allow larger accessory commercial kitchens.

¹ The PHED Committee (2-0-1; Councilmember Elrich, who would want to allow commercial kitchens as a special exception, abstained) recommended the approval of ZTA 11-08 with amendments. The entire memorandum to Council for the June 26, 2012 meeting is attached.

The Committee may wish to make its recommendation subject to new information from the July 15, 2014 public hearing.

This Packet Contains

ZTA 14-07

ZTA 11-08 action memorandum

ZTA 11-08 as approved

© number

1 – 3

4 – 12

13 – 18

Zoning Text Amendment No.: 14-07
Concerning: Accessory Commercial
Kitchen - Standards
Draft No. & Date: 1 – 6/2/14
Introduced: June 10, 2014
Public Hearing:
Adopted:
Effective:
Ordinance No.:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Councilmember Leventhal

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- Revise the development standards for an accessory commercial kitchen

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-C-1. “RESIDENTIAL ZONES, ONE-FAMILY.”
Section 59-C-1.31. “Land uses.”

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
** * * indicates existing law unaffected by the text amendment.*

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

1 **Sec. 1. DIVISION 59-C-1 is amended as follows:**

2 DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.

3 * * *

4 **Sec. 59-C-1.3. Standard development.**

5 The procedure for approval is specified in Chapter 50.

6 **59-C-1.31. Land uses.**

7 No use is allowed except as indicated in the following table:

8 - **Permitted Uses.** Uses designated by the letter "P" are permitted on any lot
 9 in the zones indicated, subject to all applicable regulations.

10 - **Special Exception Uses.** Uses designated by the letters "SE" may be
 11 authorized as special exceptions under Article 59-G.

12

	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60	R-40	R-4plex	RMH 200
* * *										
(g) Miscellaneous.										
* * *										
Commercial kitchen. ⁵⁵						P	P			
* * *										

13

14 ⁵⁵ A commercial kitchen is permitted only as an accessory to a service use that is
 15 permitted without a special exception; however, it is prohibited as an accessory use
 16 for home occupations, day care facilities, and adult foster care homes. Where a
 17 commercial kitchen is allowed, it must:

- 18 (1) occupy less than 5% of the floor area [of the building in] on the tract in
19 common ownership on which [it] the commercial kitchen is located;
- 20 (2) not be used as part of an on-site eating and drinking establishment;
- 21 (3) submit a parking plan acceptable to the Director that provides adequate on-
22 site or off-site parking for the users of the commercial kitchen during hours
23 of operation in subsection(4); and
- 24 (4) be used for the preparation of food for public consumption off-site only
25 between the hours of 6:00 AM and 9:00 PM weekdays; and 8:00 AM and
26 9:00 PM weekends.

27 * * *

28

29 **Sec. 2. Effective date.** This ordinance takes effect immediately upon the
30 date of Council adoption.

31

32 This is a correct copy of Council action.

33

34

35 _____
Linda M. Lauer, Clerk of the Council

Action

MEMORANDUM

June 22, 2012

TO: County Council

FROM: Jeffrey L. Zyontz, Legislative Attorney

SUBJECT: **Action** - Zoning Text Amendment 11-08,
Residential Zones – Accessory Commercial Kitchen

PHED Recommendation: On June 11, 2012, the Committee (2-0-1 Councilmember Elrich, who would want to allow commercial kitchens as a special exception, abstained) recommended the approval of ZTA 11-08 with the following conditions for a commercial kitchen in a residential zone:

Size: up to 5 percent of the floor area of the principle use (as introduced)

Hours of operation: if rented to a party serving food off-site, 6 AM to 9 PM weekdays, 8 AM to 9 PM weekends

Parking: a parking plan must be provided with a building permit that provides for the number of kitchen users plus one space during the hours of operation; parking could be provided on site or off site.

The Committee considered and rejected a vehicular trip limit and a minimum number of refuse collections per week.

ZTA Summary

Zoning Text Amendment (ZTA) 11-08, sponsored by Councilmembers Leventhal and Ervin, was introduced on December 13, 2011. ZTA 11-08 would define commercial kitchens as food preparation facilities that satisfy the health code provision for places that prepare food for consumption by the general public. The Maryland State code provisions, which require proper sanitation, ventilation, and food storage facilities, are incorporated by reference.

ZTA 11-08 would allow accessory commercial kitchens in the R-90 and R-60 zones if the primary use of the property is a service use that is permitted without a special exception. ZTA 11-08 would not change the current prohibitions of accessory commercial kitchens in homes. The only service uses that would be allowed to have an accessory commercial kitchen are ambulance or rescue squads, houses of worship, fire stations, and publicly owned or operated uses. The size of an accessory commercial kitchen would be limited to 5 percent of the floor area of the permitted use. The sponsor believes that small commercial kitchens on properties that lack a residential character would allow a modest but appropriate opportunity for additional commercial kitchens.

Planning Board Recommendation

The Planning Board recommended approval of ZTA 11-08 with modifications. The Board recommended the addition of provisions to further mitigate the possible impacts of an accessory commercial kitchen on surrounding residences. These provisions would include: hours of operation; limitation on the size of trucks delivering to the site; limitation on the number of visits per day/week, including deliveries; and a provision establishing adequate off-street parking for the use. The Board suggested that the details of these provisions could take into consideration several parameters established for registered and no-impact home occupations (Section 59-A-6.1).

Planning Staff Recommendation

Planning Staff recommended approval of ZTA 11-08 as introduced. In the opinion of Planning Staff, ZTA 11-08 would have limited applicability to certain service uses in the R-60 and R-90 zones. In addition, ZTA 11-08 would limit the size of the area designated for the commercial kitchen to 5 percent of the service use and would prohibit establishing an eating and drinking establishment in conjunction with the facility. Planning Staff believe that these provisions would only allow a minimal impact to surrounding neighborhoods.

Public Hearing

On January 24, 2012, the Council held a public hearing on ZTA 11-08. Six speakers testified in favor of ZTA 11-08. The proponents cited a critical need for low cost commercial kitchens to provide an opportunity for start-up caterers. The Takoma Park Presbyterian Church wanted the ability to help address the needs of its congregation and the general public. Speakers asserted that the County has a critical shortage of commercial kitchens that allow multiple users. In addition, proponents believe providing a lower cost commercial kitchen could promote micro-businesses.

One speaker suggested the need to amend ZTA 11-08 before adoption. Jim Humphrey, who did not have a formal position from the Civic Federation, repeated the concerns identified in the Planning Board's testimony and also suggested that the approval of commercial kitchens as a special exception would give communities a better opportunity to comment on the location, layout, and traffic impact on any proposed commercial kitchen.

Councilmember questions

Councilmember Elrich asked staff to be prepared to address any tax implications that might occur due to having a commercial kitchen in a tax exempt property. Councilmember Leventhal asked staff to review the current standards for home occupations and their applicability, if any, to ZTA 11-08. He also asked staff to describe how a house of worship can serve the public without a fully licensed kitchen. Staff addresses these questions in the background information section of the memorandum.

Issues

Should commercial kitchens be a permitted use under certain circumstances, a special exception use, or a prohibited use?

The Committee (2-1, Councilmember Elrich opposed) agreed that the special exception process was generally unnecessary for commercial kitchens in institutional uses, but that the public interest might be served by adding standards for such things as parking and hours of operation. Whether a special exception would be required for a commercial kitchen that exceeded particular standards was not decided.

ZTA 11-08 would allow a food service facility (a commercial kitchen) under certain circumstances: 1) the principal use must be for an ambulance or rescue squad, a house of worship, a fire station, or a publicly owned or operated use; and 2) the kitchen must be no greater than 5 percent of the floor area of the principal use. The Council can limit these circumstances or expand these circumstances. Whenever the circumstances identified by the Zoning Ordinance exist, the use would be allowed as of right without further review.

A commercial kitchen would be a commercial use in a residential zone. Ambulance or rescue squads, houses of worship, fire stations, and publicly owned or operated uses are as of right uses in the R-90 and R-60 zones. These uses can be on any type of street. The uses can abut commercial or residential neighbors. There can be inadequate parking and traffic circulation around the institutional use or no problems around them. Given these possibilities, a one-size-fits-all standard may be overly restrictive in some cases and overly permissive in others.

Special exceptions are allowable uses; however, if the use would cause a non-inherent problem at a particular location, it may be prohibited or approved with conditions that mitigate the potential problem. A special exception requires a quasi-judicial hearing where particular problems or concerns can be raised and addressed. **The Committee recommended allowing accessory commercial kitchens as a permitted use under certain circumstances. Staff recommends amending ZTA 11-08 to allow commercial kitchens as a special exception. If the Council does not want to allow commercial kitchens as a special exception use, then additional standards are warranted to protect neighboring communities.**

What home occupation standards could apply to commercial kitchens?

Total space for a commercial kitchen

ZTA 11-08 would allow up to 5 percent of the principal use for a commercial kitchen. The maximum size of a home occupation is 1,500 square feet of floor area. As proposed, ZTA 11-08 would allow kitchens to be larger than 1,500 square feet.

Department of Health and Human Services (HHS) staff believes that **any** maximum size could unreasonably limit the number of multi-user kitchens that would be realized. In the experience of HHS staff, multi-user kitchens require more floor area than single-user kitchens. If any food storage is allowed, each user must have a segregated space for their supplies. HHS's comments would suggest deleting the current 5 percent limit on the size of a kitchen and not having any size limit.

The Committee recommended retaining the current limit to give some comfort to neighbors that the kitchen would be nothing close to the predominant use of the institution. It is hard to object to the

absolute size of a facility if it represents a small portion of a building's use and if there are other safeguards to avoid nuisance problems, such as noise and parking.

Trip limits for commercial kitchen visitors

ZTA 11-08 does not have any limit on vehicular trips due to the addition of a commercial kitchen. Any limit would be extremely difficult to enforce at ambulance stations, houses of worship, fire stations, and publicly owned or operated uses. All of these principal uses may have activities unrelated to the commercial kitchen going on at the same time that the kitchen may be rented to a third party. A vehicular trip limit that applies only to the kitchen use would require an inspector to ask every person entering the facility the reason for their visit.

Takoma Park Presbyterian Church users had the following comments on this issue:

Commercial kitchens would be limited in size and therefore in capacity. The real concern would be simultaneous kitchen-use visits and delivery visits not related to an institution's currently-allowed own use of its kitchen, for instance, for meals linked to worship services, celebrations, and classes.

Our recommendation is a reasonable limitation to four outside kitchen-use visits in any two-hour period and two supplier-delivery and two staff visits per day.

The Committee did not recommend adding a visitor trip limit for commercial kitchens. A trip limitation may be warranted under unique circumstances but, as a general matter, the problem of enforcement outweighs any benefit from adding a trip limit provision.

Hours of operation

A home occupation may only have limits on its hours of operation if it requires a special exception. The hours of operation could be limited to avoid late-night or pre-dawn activity; however, this may not be necessary if neighboring houses are buffered from the activity. Limits on the hours of operation to prohibit the third party use of a kitchen for off-site catering during peak institutional events could also avoid parking problems. As a special exception, the hours of operation could also be tailored to any unique circumstances.

HHS staff again would caution that a limit on the hours of operation would limit the feasibility of creating accessory commercial kitchens. Some kitchens prepare most of their food in early morning hours in order to get their vehicles on the road before rush hour.

After reviewing the results of a survey of potential kitchen users, the Takoma Park Presbyterian Church recommended restricting the hours of operation to 6 am to 9 pm on weekdays and 8 am to 9 pm on weekend days. *The Committee recommended adding this restriction to the ZTA but did not want to restrict the use of the kitchen for on-site activities.*

Parking requirements

ZTA 11-08 does not add any parking requirements. Parking can be a problem for a surrounding community. General parking standards for the principal institutional use would be sufficient for the commercial kitchen, except when the principal use has its most intense activity. The maximum number

of parking spaces required would be equal to the number of cooks, plus a space for deliveries. Parking that is sufficient to meet the standards for the institutional use (without a waiver for the number of parking spaces required) should be sufficient to provide parking for the commercial kitchen. If the objective is to have no impact on surrounding communities, on-street parking for the institution should not be allowed when the kitchen is rented to a third party. There may be unique parking situations that could best be addressed on a case-by-case basis.

ZTA 11-08 would not change the current prohibition on heavy commercial vehicles. One light commercial vehicle is currently allowed in R-90 and R-60 zones.¹ In addition, ZTA 11-08 would not change the setback requirements for on-street parking. *The Committee recommended retaining the current limits on commercial vehicles or parking setbacks.*

As introduced, ZTA 11-08 would not make any provision for additional parking spaces for commercial kitchens. The Takoma Park Presbyterian Church suggested the following:

We believe that one space for every concurrent kitchen user and staff member, and one space for every twenty daily pick-up visits, would suffice, with allowance for use of available on-street parking and transit options and for waivers and variances.

Inadequate off-street parking is a major source of irritation to neighbors. A requirement only for commercial kitchens that does not recognize a pre-existing deficit in on-site parking would be ineffective. **The Committee recommended resolving parking issues by the provision of a parking plan that must provide for the number of kitchen users, plus one space during the hours of operation of the kitchen; parking could be provided on site or off site.**

Staff recommends adding a provision to allow a commercial kitchen only when the off-street parking requirements for the institution are satisfied (without any waiver or grandfather for less than the parking required by Chapter E) and, of those spaces, the number of spaces reserved for commercial kitchen users must equal the maximum number of commercial kitchen users allowed at any given time, plus one space.

Garbage pick-ups

Under Maryland Code 10.15.03.19 Garbage and Rubbish Disposal, a commercial kitchen is required to provide trash pick-ups “daily, or as often as necessary, to prevent a nuisance or insanitary [sic] condition”. DHHS interprets that to mean that daily pick-up is not required. Pick-ups can be less frequent as long as sanitary conditions are maintained.

HHS staff and the Takoma Park Presbyterian Church believe that this code provision is sufficient to maintain sanitary conditions and no additional provision is needed in the ZTA.

The Committee rejected the idea of a minimum number of refuse pick-ups. In the Committee’s opinion, the requirements for commercial kitchens in general is sufficient to address any problems.

Staff recommends adding a provision that would require at least 3 trash pick-ups per week.

¹A light commercial vehicle is any motor vehicle or trailer used for carrying freight or merchandise, or used in furtherance of any commercial enterprise, that is less than 21 feet long, 8 feet high, and 10,000 pounds gross vehicle weight; §59-A-2.1.

Background information

What is a commercial kitchen?

The term used to define places where food or drink is prepared for sale or service on the premises or elsewhere, or an operation where food is served to or provided for the public with or without charge is “food service facility”.² Food service facility kitchens are required by the regulations to be equipped with commercially approved equipment that meets national standards. All plumbing and drains must comply with the requirements of WSSC. The materials used in the construction must satisfy County regulations.

A commercial kitchen is a new term in the County Code. ZTA 11-08 would define it as a facility that satisfies the requirements of Chapter 15 for the preparation of food served to the public. Chapter 15 uses the term “food service facility” instead of the term “commercial kitchen”. (HHS has not objected to the use of the term “commercial kitchen”.)

A food service facility must have a certified food service manager on site whenever food is being prepared.³ A caterer must have a certified food service manager on site and access to a licensed food service facility (a base of operation) to prepare food for human consumption.

How many licensed facilities are there, and how many rent their facilities to multiple users? Is there a shortage?

There are some 3,500 licensed food service facilities in the County. The vast majority of those are restaurants.⁴ To the best of HHS’s information, only 10 of the 3,500 licensed facilities rent space to

² Chapter 15 definition:

Food service facility: Any enterprise that prepares or sells food or drink for human consumption on or off the premises. Food service facility includes:

- (1) Any restaurant, coffee shop, retail market, cafeteria, short-order cafe, luncheonette, tavern, sandwich stand, soda fountain; and
- (2) Any food service facility in an industry, institution, hospital, club, school, church, catering kitchen, or camp.

* * *

License: A document authorizing a food service facility or an itinerant food service facility to operate in the County.

³ Sec. 15-8. License required; exceptions; certified manager required.

- (a) A person must not operate a food service facility or an itinerant food service facility without a valid license from the director. A separate license is required for each food service facility or itinerant food service facility.
- (b)
 - (1) After January 15, 1989, a licensee must not operate a food service facility unless at least one employee is a certified food service manager, or is taking a course that will train the employee to be a certified food service manager.
 - (2) After July 15, 1989, a licensee must not operate a food service facility unless the facility is under the immediate control of a certified food service manager.
 - (3) This requirement does not apply to:
 - (A) A food service facility where no unwrapped food is handled; or
 - (B) A seasonal food service facility in which little or no potentially hazardous food is prepared, handled or served.
 - (4) This requirement may be applied to an itinerant food service facility at the discretion of the director.
 - (5) The director may postpone or waive this requirement if in unusual circumstances its application to a particular licensee would result in undue hardship.

⁴ The number of caterers and restaurants is not available from this aggregate data.

multiple caterers. Only 5 of those 10 facilities are available for any type of cooking.⁵ All that offer a full range of cooking facilities are located in the Gaithersburg area. The other 5 facilities rent their kitchens but have a more limited range of cooking opportunities.⁶

HHS believes that there is a shortage of facilities that are equipped to handle multiple vendors. Restaurants do not rent their kitchens. That alone vastly reduces the number of possible rental kitchens. HHS does not know why the desire for space is not being met by the market.

If the expected rent of a commercial kitchen exceeded the costs by a sufficient margin, the market would provide more multi-user kitchens.⁷ The exceedingly small number of places that rent to multiple users is an indication that the rent businesses are willing to pay is generally lower than the cost to provide the facility.

How many commercial kitchens would be created if ZTA 11-08 is approved?

There are 374 houses of worship and another 10 fire stations that are located in the R-90 or R-60 zones.⁸ There is no way to reliably know how many of these institutions will want to go through the time and expense of being a licensed commercial kitchen. Only one institution has indicated a desire to have a commercial kitchen.

What makes a commercial kitchen expensive?

HHS staff estimates that converting an existing kitchen to commercial standards would be in the ballpark of \$100,000. The accuracy of that ballpark number is dependent upon the condition of the current kitchen. If additional water supply or waste water plumbing is required, the cost can easily go above \$200,000.

The County Code incorporates all of the state standards for kitchens where food is prepared for the public on a regular basis.⁹ Every physical aspect of a kitchen is regulated. Floors, walls, and ceilings must be constructed in a manner that keeps building materials out of food.¹⁰ There are minimum ventilation and lighting standards.¹¹ The plumbing fixtures must be sufficient for sanitation, with

⁵ Prime Choice, 7621 Rickenbacker, Gaithersburg; Le Academie Cuisine, 16006 Industrial Drive, Gaithersburg; Superb Cuisine, 8621 Ziggy Lane, Gaithersburg; Delicious Gourmet, 7840 Beechcraft Avenue, Gaithersburg; CKR 18877-G N. Fredrick Road, Gaithersburg.

⁶ El Nopalito Grill, 2259 Bel Pre Road, Silver Spring; Creative Cakes, 8814 Brookville Road, Silver Spring; Rosa Melgarejo at Lucia's Italian Deli, 2409 University Blvd, Silver Spring; Chloe's Coffee, 244 Main Street, Gaithersburg; Praline Bakery, 4611 Sangamore Road, Bethesda.

⁷ In economic terms, when the rent exceeds the cost, it would be referred to as an economic demand. In the absence of economic demand, there are wants, desires, and dreams.

⁸ Parcel file GIS database.

⁹ 15.00.01.02 Minimum Construction and Operating Standards for Food Service Facilities.

The Sections of the Code of Maryland Regulations (COMAR) 10.15.03, Food Service Facilities and the Maryland Department of Health and Mental Hygiene's standards for "Public Health Management of Food Service Employees" governing: food supplies, food protection, personnel, food equipment and utensils, sanitary facilities and control, other facilities and operations, special food service facilities, egg records, choking posters, plan review, priority assessment, hazard analysis, food-borne disease investigation and control, the sampling, detention, and condemnation of food, and Table I are incorporated as the construction and operating standards of this regulation...

¹⁰ COMAR 10.15.03.21.

¹¹ COMAR 10.15.03.22.

additional systems for keeping grease out of the sewer system.¹² The need for adequate fire suppression may require a higher capacity water supply.

Will ZTA 11-08 be a tool for start-up businesses?

ZTA 11-08 would not regulate the size or the age of the businesses that rent commercial kitchens. ZTA 11-08 would not regulate the rental price. The rent for any commercial kitchen is a matter of private concern. As a matter of supply and demand, rental prices for commercial kitchens may be decreased by an increase in supply of kitchens.

How can houses of worship and non-profit institutions serve food to the general public without a commercial kitchen?

There are exceptions to the licensing requirement that apply to limited uses of kitchen facilities.¹³ The licensing requirements do not apply to a food service facility (or itinerant food service facility¹⁴) where no unwrapped food is handled, or to a seasonal food service facility in which little or no potentially hazardous food is prepared, handled, or served.¹⁵ Under a temporary license, the Department of Health and Human Services inspects for basic sanitation and food handling but does not require the physical infrastructure necessary for a fully licensed facility. The County charges \$30 for an unlicensed facility serving potentially hazardous food. A house of worship may also serve food to its own congregation without a license.¹⁶

What are the home occupation standards for parking, hours of operation, and traffic?

The Zoning Ordinance defines no-impact, registered, and major special exceptions.¹⁷ Each class of home occupation has standards for the allowed activity leave (number of employees, vehicular trips related to the home occupation) and parking. In the R-90 and R-60 zones, only one light commercial vehicle may be parked at any time. Parking of heavy commercial vehicles is prohibited.¹⁸

Home occupations are not allowed in any newly constructed additions. The space used by no-impact home occupations may not exceed 33 percent of the floor area in the house. Space used by a major home occupation must not exceed 33 percent of the residential floor area or 1,500 square feet, whichever is less.

¹² COMAR 10.15.03.18.18.

¹³ Sec. 15-8 (c).

A license is not required if food or drink is:

- (1) Prepared or provided from the homes of members of a nonprofit organization;
- (2) Shared among the members of the organization at no charge; and
- (3) Not served to the public.

¹⁴ An itinerant food service facility is a place that operates for a temporary period at a fixed location, not exceeding 14 days, at a fair, carnival, public exhibition, construction project, recreational facility or similar gathering; or any food service facility which travels from place to place.

¹⁵ Section 15-8(d).

¹⁶ Op cit; Sec. 15-8(c).

¹⁷ Commercial kitchens are a prohibited use in residential zones, even as a home occupation. Home occupations only allow occupations that use household equipment, office equipment, or equipment necessary for producing art, handicrafts, beer, or wine. The Department of Health and Human Services (HHS) will not license a commercial kitchen in a single-family house.

¹⁸ Many caterers use light commercial vehicles. The largest caterers use heavy commercial vehicles.

The following tables apply to R-60 and R-90 zoned property.

	Visitor Trips	Parking Requirements
No-impact	5 visits per week (including deliveries – no non-resident employees)	Two or less total vehicles
Registered	20 visits per week and 5 per day (including deliveries)	Two or less total vehicles
Major (Special Exception required)	Limits may be imposed as a condition of the special exception. Maximum 2 non-resident employees.	At least enough for the minimum residential use plus employees and the number of visitors allowed at one time

Each home occupation parking area must be set back from a lot line. The setback varies by zone; the largest setback (30 feet for R-90 and 25 for R-60) is required on the front of the property.

What are the tax implications of allowing a profit-making enterprise in a tax-exempt facility?

Staff will not advise any individual property owner about their specific tax treatment. The tax implication of a land use is not a zoning ordinance concern. Property owners should contact the State Department of Assessments and Taxation (SDAT) on real estate tax questions.

As a general matter, if a property is primarily (majority) used for the exempt purpose, the property will retain the exemption. However, if a small portion of the property (less than a majority) is used for a for-profit commercial purpose, then SDAT will most likely prorate the exemption, and the portion of the property that is used for a for-profit use will be subject to tax. The use for commercial for-profit activities must be more than a de minimus use to get the prorated treatment. One example that was used to describe de minimus use was a church parking lot used near Byrd stadium for football game day parking. There were only 8 home games, and otherwise the parking lot was used for parking for church functions only. Therefore, this was de minimus use and did not affect the exemption, and the entire property remained exempt.

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Ordinance No.: 17-15
Zoning Text Amendment No.: 11-08
Concerning: Residential Zones –
 Accessory Commercial Kitchen
Draft No. & Date: 2 – 6/15/12
Introduced: December 13, 2011
Public Hearing: January 24, 2012
Adopted: June 26, 2012
Effective: July 16, 2012

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Councilmembers Leventhal and Ervin

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- Define a commercial kitchen; and
- Add accessory commercial kitchen as a permitted land use in certain residential zones under certain circumstances.

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-A-2 “DEFINITIONS AND INTERPRETATION”
Section 59-A-2.1 “Definitions”
DIVISION 59-C-1 “RESIDENTIAL ZONES, ONE-FAMILY”
Section 59-C-1.31 “Land uses”

EXPLANATION:

Boldface indicates a heading or defined term.

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## OPINION

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ZTA 11-08 would allow accessory commercial kitchens in the R-90 and R-60 zones if the primary use of the property is a service use that is permitted without a special exception. ZTA 11-08 would not change the current prohibitions of accessory commercial kitchens in homes. The only service uses that would be allowed to have an accessory commercial kitchen are ambulance or rescue squads, houses of worship, fire stations, and publicly owned or operated uses. The size of an accessory commercial kitchen would be limited to 5 percent of the floor area of the permitted use.

The Planning Board recommended approval of ZTA 11-08 with modifications. The Board recommended the addition of provisions to further mitigate the possible impacts of an accessory commercial kitchen on surrounding residences. These provisions would include: hours of operation; limitation on the size of trucks delivering to the site; limitation on the number of visits per day/week, including deliveries; and a provision establishing adequate off-street parking for the use. The Board suggested that the details of these provisions could take into consideration several parameters established for registered and no-impact home occupations (Section 59-A-6.1).

The Council held a public hearing on January 24, 2012. Six speakers testified in favor of ZTA 11-08. The proponents cited a critical need for low cost commercial kitchens to provide an opportunity for start-up caterers. The Takoma Park Presbyterian Church wanted the ability to help address the needs of its congregation and the general public. Speakers asserted that the County has a critical shortage of commercial kitchens that allow multiple users. In addition, proponents believe providing a lower cost commercial kitchen could promote micro-businesses.

One speaker suggested the need to amend ZTA 11-08 before adoption. Jim Humphrey, who did not have a formal position from the Civic Federation, repeated the concerns identified in the Planning Board's testimony and also suggested that the approval of commercial kitchens as a special exception would give communities a better opportunity to comment on the location, layout, and traffic impact on any proposed commercial kitchen. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held worksessions on February 29 and June 11, 2012 to review the amendment. On June 11, 2012, the Committee recommended the approval of ZTA 11-08 with the following conditions for a commercial kitchen in a residential zone:

*Size:* up to 5 percent of the floor area of the principle use (as introduced)

*Hours of operation:* if rented to a party serving food off-site, 6 AM to 9 PM weekdays, 8 AM to 9 PM weekends

*Parking:* a parking plan must be provided with a building permit that provides for the number of kitchen users plus one space during the hours of operation; parking could be provided on site or off site.

The Committee considered and rejected a vehicular trip limit and a minimum number of refuse collections per week.

The District Council reviewed Zoning Text Amendment No. 11-08 at a worksession held on June 26, 2012 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 11-08 will be approved as revised.

#### *ORDINANCE*

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*

1 **Sec. 1. DIVISION 59-A-2 is amended as follows:**

2 **Division 59-A-2. DEFINITIONS AND INTERPRETATION.**

3 **Sec. 59-A-2.1. Definitions.**

4 \* \* \*

5 **Commercial Kitchen:** a facility that satisfies the requirements of Chapter 15 for  
6 the preparation of food that could be sold to the public.

7 \* \* \*

8 **Sec. 2. DIVISION 59-C-1 is amended as follows:**

9 **DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.**

10 \* \* \*

11 **Sec. 59-C-1.3. Standard development.**

12 The procedure for approval is specified in Chapter 50.

13 **59-C-1.31. Land uses.**

14 No use is allowed except as indicated in the following table:

15 - **Permitted Uses.** Uses designated by the letter "P" are permitted on any lot  
16 in the zones indicated, subject to all applicable regulations.

17 - **Special Exception Uses.** Uses designated by the letters "SE" may be  
18 authorized as special exceptions under Article 59-G.

19

|                                                                                                                                                                                                                                                                                                                                                                                                                           | RE-2 | RE-2C | RE-1 | R-200 | R-150 | R-90 | R-60 | R-40 | R-4plex | RMH 200 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|-------|------|-------|-------|------|------|------|---------|---------|
| * * *                                                                                                                                                                                                                                                                                                                                                                                                                     |      |       |      |       |       |      |      |      |         |         |
| <b>(g) Miscellaneous.</b>                                                                                                                                                                                                                                                                                                                                                                                                 |      |       |      |       |       |      |      |      |         |         |
| * * *                                                                                                                                                                                                                                                                                                                                                                                                                     |      |       |      |       |       |      |      |      |         |         |
| <b>Commercial kitchen</b> *[[, if accessory to service uses that are permitted without a special exception. However, accessory commercial kitchens are prohibited in home occupations, day care facilities, and adult foster care homes. The accessory commercial kitchen must occupy less than 5% of the building in which it is located and must not be used as part of an on-site eating and drinking establishment.]] |      |       |      |       |       | P    | P    |      |         |         |
| * * *                                                                                                                                                                                                                                                                                                                                                                                                                     |      |       |      |       |       |      |      |      |         |         |

20 \* A commercial kitchen is permitted only as an accessory to a service use that is  
 21 permitted without a special exception; however, it is prohibited as an accessory use  
 22 for home occupations, day care facilities, and adult foster care homes. Where a  
 23 commercial kitchen is allowed, it must:  
 24 (1) occupy less than 5% of the floor area of the building in which it is located;  
 25 (2) not be used as part of an on-site eating and drinking establishment;  
 26 (3) submit a parking plan acceptable to the Director that provides adequate on-  
 27 site or off-site parking for the users of the commercial kitchen during hours  
 28 of operation in subsection(4); and

29 (4) be used for the preparation of food for public consumption off site only  
30 between the hours of 6:00 AM and 9:00 PM weekdays; and 8:00 AM and  
31 9:00 PM weekends.

32

33 **Sec. 3. Effective date.** This ordinance takes effect 20 days after the date of  
34 Council adoption.

35

36 This is a correct copy of Council action.

37

38

39 \_\_\_\_\_  
Linda M. Lauer, Clerk of the Council