

Ordinance No: 15-30
Zoning Text Amendment No: 04-09
Concerning: Eating and Drinking
Establishments in C-O, C-P and O-M Zones
Draft No. & Date: 3 – 9/20/04
Introduced: June 22, 2004
Public Hearing: July 27, 2004; 1:30 PM
Adopted: October 12, 2004
Effective: November 1, 2004

**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 Perez and Praisner

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- [[eliminating the requirement for a special exception to establish an eating and drinking establishment in the O-M, C-O, and C-P zones;]]
- allowing an eating and drinking establishment in the O-M, C-O, and C-P zones [[to provide]] with a patron entrance directly from the exterior of [[the]] an office building by right, under certain circumstances;
- Requiring an eating and drinking establishment in an office building in the O-M, C-O, and C-P zones to obtain a special exception only when adjoining or confronting one-family residential property; and
- generally amending the special exceptions provisions for a retail establishment in an office building.

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

DIVISION 59-C-4	“COMMERCIAL ZONES”
Section 59-C-2	“Land uses”
DIVISION 59-G-2	“SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS”
Section 59-G-2.181	“Eating and Drinking Establishments in the O-M Zone”
Section 59-G-2.48	“Retail establishments in an office building”

<i>EXPLANATION: Boldface indicates a heading or a defined term. <u>Underlining</u> indicates text that is added to existing laws by the original text amendment.</i>
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[Single boldface brackets] indicate text that is deleted from existing law by the 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.*

OPINION

Zoning Text Amendment No. 04-09 was introduced on June 22, 2004, to revise comprehensively the standards for establishing a restaurant in the O-M, C-O, and C-P Zones. The ZTA as introduced would permit a restaurant by right, rather than by special exception, in an office building and to have a patron entrance directly from the exterior of the building. The ZTA broadens the applicability of ZTA 04-05 which, dealt only with the outside patron entrance issue for restaurants in the C-O zone. Eating and drinking establishments are now regulated along with newsstands and similar convenience services that are often found inside an office building lobby, and except for the O-M zone, allowed only by special exception.

The Montgomery County Planning Board in its report to the Council recommended that the text amendment be approved with modifications.

The County Council held a public hearing on July 27, 2004 to receive testimony concerning the proposed text amendment. 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 a worksession on September 20, 2004 to review Zoning Text Amendment 04-09. The Committee recommended that Zoning Text Amendment 04-09 be approved with certain revisions. Under the Committee recommendation an eating and drinking establishment in the O-M, C-O, and C-P zones would be permitted by right under most circumstances and allowed to have a patron entrance directly from outside the building. An eating and drinking establishment in the O-M, C-O, and C-P zones would require a special exception only if the establishment adjoins or confronts one-family residential land.

The District Council reviewed Zoning Text Amendment No. 04-09 at a worksession held on October 12, 2004, 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. 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:

Sec. 1. Division 59-C-4 is amended as follows:

DIVISION 59-C-4. COMMERCIAL ZONES.

* * *

59-C-4.2. Land uses.

* * *

	C-T	O-M	C-O	C-P	C-1	C-2	C-3	C-4	C-5	C-6	H-M	Country Inn
(d) Commercial:												
* * *												
Eating and drinking establishment, excluding a drive-in.	SE ¹⁵	P/SE* [SE ¹⁶]	P/SE* [SE ¹¹]	P/SE* [SE ¹¹]	P ¹⁷	P		P ¹⁷	P ¹⁶	P	P	

[[*Only in an office building. An eating and drinking establishment in an office building may have a patron entrance directly from the exterior of the building.]]

*An eating and drinking establishment is a permitted use in an office building and may have an exterior patron entrance. An eating and drinking establishment in an office building requires a special exception only when the office building in which the eating and drinking establishment is located adjoins or confronts one-family residential zoned property. See Section 59-G-2.18 "Eating and Drinking Establishments in the O-M Zone" or Section 59-G-2.48 "Retail Establishments in an office building".

[11 See "Retail establishments in an office building." Section 59-G-2.48.]

11 See "Retail establishments in an office building." Section 59-G-2.48.

* * *

15 See "Retail and service establishments." Section 59-G-2.46.

[16 Provided there is no direct patron entrance to the facility from the exterior of
 22 the building. In the O-M zone, a restaurant with an exterior patron entrance
 23 is permitted for an interim period of time from November 14, 1994 to July 1,
 24 1997. A restaurant constructed under this provision may continue as a
 25 conforming use after July 1, 1997 subject to the provisions of Sec. 59-G-
 26 2.181.]

16 Provided there is no direct entrance to the facility from the exterior of the
building.

17 [Provided that no dancing, or] No entertainment, except music [is] may be
 offered; however, patron dancing is permitted if the area designated for
 dancing purposes does not occupy more than 10 percent of the total gross
 area of the restaurant, not to exceed 200 square feet.

Sec. 2. Article 59-G.2 is amended as follows:

**DIVISION 59-G.2. SPECIAL EXCEPTIONS—STANDARDS AND
 REQUIREMENTS.**

* * *

[59-G-2.181. Eating and Drinking Establishments in the O-M Zone.

In the O-M zone, a restaurant with an exterior patron entrance may be allowed
 upon a finding , in addition to the general findings required in Division 59-G-1.2,
 that the following conditions are met:

- (a) the proposed restaurant must obtain a building permit before July 1,
 1997;
- (b) the restaurant must not exceed 9,000 square feet;
- (c) the lot on which the restaurant is to be built does not abut residentially
 zoned land;
- (d) the lot on which the restaurant is to be built must abut an existing
 office building of at least 100,000 square feet; and

- (e) the location of the proposed restaurant must not be more than 1500 feet from an existing Metro station.]

59-G-2.181. Eating and drinking establishments in the O-M zone.

In the O-M zone, an eating and drinking establishment with an exterior patron entrance may be allowed in an office building subject to the general findings of Division 59-G-1.2. An eating and drinking establishment in the O-M zone may have patronage on weeknights, Saturdays and Sundays; provided that: (1) there exists sufficient off-street parking to accommodate the patrons of the eating and drinking establishment, and (2) the operation of the eating and drinking establishment will not adversely effect the use and enjoyment of surrounding properties

* * *

59-G-2.48. Retail establishments in an office building.

Retail sales and personal services establishments in an office building [may be permitted] are subject to the following requirements:

- (a) Only the following types of establishments are allowed [shall be permitted]:

Barber and beauty shop[s].

Delicatessen[s].

Drug store[s].

Dry cleaning and laundry pick-up station[s].

Newsstand[s].

Eating and drinking establishment [[in the C-T zone]].

Specialty shop[s].

- (b) The establishment must be primarily for the service of tenants and employees of the building or group of buildings on the same lot or group of contiguous lots in common ownership or control, and the

tenants and employees of adjoining and confronting lots, except that the requirements of this section do not limit the patronage of an eating and dinking establishment on weeknights, Saturdays and Sundays; provided that: (1) there exists sufficient off-street parking to accommodate the patrons of the eating and drinking establishment, and (2) the operation of the eating and drinking establishment will not have adversely effect the use and enjoyment of surrounding properties.

(c) There must be no entrances directly from the exterior to the establishment [, except in the C-O zone where an eating and drinking establishment may have a direct entrance from the exterior of a building] except an eating and drinking establishment may have a direct entrance from the exterior of the building if the Board finds that a direct exterior entrance to the eating and drinking establishment will not adversely effect the use and enjoyment of surrounding properties.

(d) The establishment [shall] must be so located and constructed as to protect tenants of the building from noise, traffic, odors and interference with privacy.

[(e) In the C-P zone such establishments shall occupy not more than 5 percent of the total floor area of the building or group of buildings.]

[(f) In the C-O zone the requirements of this section shall not be deemed to limit the patronage of an eating and dinking establishment on weeknights, Saturdays and Sundays; provided that: (1) there exists sufficient off-street parking to accommodate the patrons of the eating and drinking establishment, and (2) the operation of the eating and drinking establishment will have no adverse effect upon the use and

101 enjoyment of surrounding properties. An eating and drinking
102 establishment in the C-O zone may have an entrance directly from the
103 exterior of a building.]

104 **Sec. 4. Effective date.** This ordinance becomes effective 20 days
105 after the date of Council adoption.

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107 This is a correct copy of Council action.

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112 Mary A. Edgar, CMC

113 Clerk of the Council