

**City of South Daytona
Redevelopment Department**

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Memorandum

To: James L. Gillis, Jr., City Manager
From: Patty Rippey, Redevelopment Director *PR*
Date: August 25, 2020
Subject: Ordinance 2020-09 – Community Redevelopment District Overlay Amendment

AGENDA ITEM
E 17 DATE 9/14/20

This memorandum serves to request City Council approval of Ordinance 2020-09. This is an administrative request to amend the City’s Consolidated Land Development Code, Article V. Zoning Regulations, Section 5.5 Schedule of zoning district regulations, S. Community redevelopment district overlay by adding the following prohibited uses: Smoke Shop/Tobacco Store, E-Cigarette/Vape Shop, Smoking Bar/Lounge. Definitions for purposes of this section will be included in the amendment.

BACKGROUND AND ANALYSIS: The purpose of the proposed amendment is to prevent the location and expansion of retail establishments in the Community Redevelopment Area (CRA) that display, sell, distribute, deliver, offer, furnish, or market any tobacco product, juice, e-cigarette/vaping device products or paraphernalia and any establishment that sells tobacco products/paraphernalia for onsite use or leases/provides paraphernalia for onsite use.

These businesses sell smoking related retail items and services that are only legally available to individuals that are 18 years or older. The proliferation of these establishments, particularly in the CRA could result in undesirable impacts in the community. Among those impacts are increased potential for tobacco sales to minors, greater opportunity for the sale of illegal drug paraphernalia that is marketed as tobacco paraphernalia, and a heightened risk of negative aesthetic impacts, blight and loss of property values of residential neighborhoods and businesses in close proximity to such uses. While the proposed change restricts these retail establishments from locating in the CRA, they will still be an allowed use in other zoning districts within the City.

Based on the following excerpt from the article “Location, Location, Location: Tobacco & E-Cig Point of Sale Regulating Retailers for Public Health”, the location and density of tobacco and e-cigarette stores increase smoking and vaping rates in teenagers and young adults.

"The location and density of tobacco retailers influences tobacco use among residents living in those communities. More than 40 percent of U.S. teens live or attend school near a tobacco retailer. Moreover, youth who live or attend school in neighborhoods with the highest density of tobacco outlets or retail tobacco advertising have higher smoking rates compared to youth who live or attend school in neighborhoods with fewer or no tobacco outlets. Young adults living in neighborhoods with greater tobacco retail density initiate use of non-cigarette combustible tobacco products (e.g., cigars, cigarillos, hookah) and experiment with cigarettes more than young adults residing in neighborhoods with lower tobacco retail density. And for current adult smokers, living less than 500 meters from a tobacco retailer significantly decreases their chances of quitting and remaining abstinent.

Similar trends are emerging with e-cigarettes. Between 2015 and 2017, e-cigarette retail sales increased 70 percent (from \$775 million to \$1.3 billion), and jumped again from 2017 to 2018 by 77 percent, which is largely attributed to the rapid uptake of JUUL (note: a type of e-cigarette popular with teens). Some 11 million adults use e-cigarettes daily, but use has reached epidemic levels among youth and younger adults. Between 2011 and 2015, e-cigarette use increased 900 percent among youth, and today 20 percent of 18- to 29-year-olds use e-cigarettes regularly or occasionally. This marked uptake has been driven by a proliferation in flavored and menthol products, which youth and young adults overwhelmingly prefer."

Source: "Location, Location, Location: Tobacco & E-Cig Point of Sale Regulating Retailers for Public Health", January 2019 edition, Public Health Law Center, Tobacco Control Legal Consortium online publication, www.publichealthlawcenter.org.

Also, noted in "Vaping: Dangerous, Available and Addicting" by the American Academy of Pediatrics:

"E-cigarettes are unhealthy and addictive. The Centers for Disease Control and Prevention (CDC) are investigating an outbreak of severe lung disease related to vaping that has caused severe illness and death in many US states. The American Academy of Pediatrics joins the CDC to remind parents that e-cigarette use is never safe for youth, young adults, or pregnant and/or breastfeeding women."

Last Updated 1/8/2020, Source: Adapted from AAP News (Copyright © 2018 American Academy of Pediatrics) The information contained on this Web site should not be used as a substitute for the medical care and advice of your pediatrician. There may be variations in treatment that your pediatrician may recommend based on individual facts and circumstances.

In addition to health consequences to children and young adults, there are negative aesthetic impacts, including blight and loss of property values to businesses near these businesses. As a testament to this fact, the following statements were received from local business owners whose businesses are or have been located near a smoke shop or lounge.

"I own Sherzer Insurance in South Daytona. We have been in the same location since 1979. When the city let a Hookah Lounge rent the office next door a few years ago we

would come into the office and smell different smells. It was a strong odor that would come from next door because the ceiling in our unit has a gap at the top that would let the smell in. Also, on Mondays the parking lot would have trash and empty alcohol containers that we would have to clean up.” Source: Jim Allender, Sherzer Insurance (July 31, 2020)

“As someone who has had my business on Ridgewood in S. Daytona for 25 years, we need good quality businesses on that corridor. Enough thrift stores, hookah bars, and transient business. When my clients come to my showroom, a lot will comment on the lack of quality business in the area. They don’t like the flags and sandwich signs on Ridgewood, saying it looks like a flea market. We have one in our plaza (S. Daytona Shopping Center) that has its flags out on the street every day since the first of the year. When leaving the plaza, you have to pull into traffic to see around his flags to pull onto Ridgewood. It’s time to enact the special events rules and stick to time limits.” Source: Mike Arminio, Bay Breeze Blinds (July 30, 2020)

Other aesthetic concerns include signage and lights. E-cigarette/vape shops within the City utilize neon rope lighting in their windows and doorways. This type of lighting is bright, distracting and utilized primarily to draw attention to their place of business. This type of lighting or signage is not permitted by the Land Development Code, Section 8.2 Sign Regulations and are now subject to code compliance measures.

This administrative request proposes the following amendment to the City’s LDC, Article V. Zoning Regulations, Section 5.5 Schedule of zoning district regulations, S. Community redevelopment district overlay adding the following prohibited uses: Smoke Shop/Tobacco Store, E-Cigarette/Vape Shop, Smoking Bar/Lounge and adding definitions for purposes of this section. Deleted text is shown in ~~strike through~~ and new text is underlined).

1. Smoke Shop/Tobacco Store, E-Cigarette/Vape Shop, Smoking Bar/Lounge.

i. Definitions for the purpose of this section:

1. Ancillary sale shall mean where a grocery store, supermarket, convenience store or any other retail establishment with no more than two percent of its gross floor area, or 200 square feet, whichever is less, for the display, sale, distribution, delivery, offering, furnishing, or marketing of conventional cigars, cigarettes, tobacco, electronic cigarettes, vaping devices or any smoking, tobacco, electronic cigarette, vaping device, hookah pipe or any other type of smoking device paraphernalia. For any grocery store, convenience market, retail kiosk or any other retail establishment consisting of 250 square feet or less, “ancillary sale” shall mean where no more than five square feet are used for the display, sale, distribution, delivery, offering, furnishing, or marketing of conventional cigars, cigarettes, tobacco, electronic cigarettes, vaping devices or any smoking, tobacco, electronic cigarette, vaping device, hookah pipe or any other type of smoking device paraphernalia, regardless of square footage uses, is subject to the restrictions in this section.
2. E-Cigarette or vaping device shall mean any electronically actuated device or inhaler meant to simulate cigarette smoking that uses a heating element to vaporize a liquid solution, popularly referred to as “juice”, and that causes the user to exhale smoke, vapor, or substance other than produced by unenhanced human exhalation. The juice used in e-

cigarettes and other vaping devices typically contains nicotine, and for this reason e-cigarettes, vaping devices and their juice can be classified as both tobacco products and tobacco paraphernalia.

3. E-Cigarette or Vape Shop shall mean any establishment that exceeds the definition for ancillary sale, display, distribution, delivery, offering, furnishing, or marketing of any tobacco product, juice, e-cigarette or vaping device products or paraphernalia.
4. Smoke shop and tobacco store shall mean any establishment that exceeds the definition for ancillary sale, display, distribution, delivery, offering, furnishing, or marketing of tobacco, tobacco products, or tobacco paraphernalia.
5. Tobacco shall mean any preparation of the nicotine-rich leaves of the tobacco plant, which are cured by a process of drying and fermentation for use in smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body.
6. Tobacco Paraphernalia shall mean any paraphernalia, equipment, device, or instrument that is primarily designed or manufactured for the smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing or ingesting by another means into the body of tobacco, tobacco products, or other controlled substances as defined by the State of Florida Statute Chapter 893 Drug Abuse and Prevention. Items classified as tobacco paraphernalia include but are not limited to the following items: pipes, punctured metal bowls, bong, water bong, electric pipes, e-cigarette juice, buzz bombs, vaporizers, hookahs, and devices for holding burning material. Lighters and matches shall be excluded from the definition of tobacco paraphernalia.
7. Tobacco Product shall mean any product in leaf, flake, plug, liquid, or any other form, containing nicotine derived from the tobacco plant, or otherwise derived, which is intended to enable human consumption of the tobacco or nicotine in the product, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by an other means. For the purposes of this section, the term "tobacco product" excludes any product that has been specifically approved by the United States Food and Drug Administration (FDA) for sale as a tobacco/smoking cessation product or for other medical purposes, where such product is marketed and sold solely for such an approved propose.
8. Smoking bar or lounge shall mean any business that sells, leases, or provides for onsite consumption or use by customers, either individually or communally, tobacco, tobacco products, tobacco paraphernalia, E-cigarette or vaping device. This includes, but is not limited to, establishments known as Hookah bars or lounges and Shisha bars.

CONCLUSION: In accordance with Section 3.2(J)(1) of the Land Development Code, there are certain criteria that must be evaluated before adoption of a Land Development Code amendment. The Planning & Appeals Board must consider the following criteria when making their recommendation:

1. Identifies any provision of the Code, Comprehensive Plan or other law relating to the proposed change and describes how the proposal relates to them.

The proposed amendments are consistent with the Comprehensive Plan and the Land Development Code.

2. States factual and policy considerations pertaining to the recommendation.

The purpose of the amendment is to update and strengthen the regulations of the Land Development Code. There are no other policy considerations pertaining to the recommendations other than what has been stated in the background and analysis of this report.

3. Includes the written comments, if any, received from the Development Review Committee.

Comments received from the Development Review Committee have been incorporated into the proposed amendment.

RECOMMENDATION: The Planning and Appeals Board reviewed the item at their August 19, 2020 meeting and unanimously voted to recommend approval of this item to the City Council. Staff also recommends approval of this item to improve the quality of the Community Redevelopment District by preventing the location or expansion of the type of retail establishments outlined above.

ORDINANCE NO. 2020-09

AN ORDINANCE OF THE CITY OF SOUTH DAYTONA, FLORIDA, AMENDING THE CONSOLIDATED LAND DEVELOPMENT REGULATIONS, ARTICLE V. ZONING REGULATIONS, SECTION 5.5 SCHEDULE OF ZONING DISTRICT REGULATIONS, S. COMMUNITY REDEVELOPMENT DISTRICT OVERLAY ADDING PROHIBITED USES L. SMOKE SHOP/TOBACCO STORE, E-CIGARETTE/VAPE SHOP, SMOKING BAR/LOUNGE; ADDING DEFINITIONS FOR PURPOSES OF SECTION L.; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council adopted a redevelopment plan in 1997 creating a Community Redevelopment District and programs for selected areas of the City that have been designated as needing redevelopment under State Statute; and

WHEREAS, the City Council desires continued improvement of the appearance and quality of commercial activity in the Community Redevelopment District; and

WHEREAS, the Community Redevelopment District Overlay established in 2008 provides for the application of specific regulations modifying the underlying zoning regulations within the Community Redevelopment District; and

WHEREAS, the Community Redevelopment District Overlay was established to enhance the quality and improve property values in the redevelopment district; and

WHEREAS, the permitted uses within the Community Redevelopment District Overlay shall be the same as the underling zoning classification except for prohibited uses established by this and previous ordinances; and

WHEREAS, adding prohibited uses to the Community Redevelopment District Overlay is essential to a rational and continued improvement of the commercial corridors in the Community Redevelopment District; and

WHEREAS, the addition of prohibited uses in the Community Redevelopment District has received a unanimous and favorable recommendation from the Planning and Appeals Board; and

WHEREAS, words which are underlined (underlined) are additions to text and words that are struck through (~~struck through~~) are deletions from the text.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, VOLUSIA COUNTY, FLORIDA THAT:

SECTION 1. The City Council of the City of South Daytona, Florida, hereby amends The Consolidated Land Development Regulations, Article V. Zoning Regulations, Section 5.5 Schedule of zoning district regulations, S. Community redevelopment district overlay adding the following prohibited uses: Smoke Shop/Tobacco Store, E-Cigarette/Vape Shop, Smoking Bar/Lounge and adding definitions for purposes of this section as follows:

1. Smoke Shop/Tobacco Store, E-Cigarette/Vape Shop, Smoking Bar/Lounge.

(i.) Definitions.

1. Ancillary sale shall mean where a grocery store, supermarket, convenience store or any other retail establishment with no more than two percent of its gross floor area, or 200 square feet, whichever is less, for the display, sale, distribution, delivery, offering, furnishing, or marketing of conventional cigars, cigarettes, tobacco, electronic cigarettes, vaping devices or any smoking, tobacco, electronic cigarette, vaping device, hookah pipe or any other type of smoking device paraphernalia. For any grocery store, convenience market, retail kiosk or any other retail establishment consisting of 250 square feet or less, "ancillary sale" shall mean where no more than five square feet are used for the display, sale, distribution, delivery, offering, furnishing, or marketing of conventional cigars, cigarettes, tobacco, electronic cigarettes, vaping devices or any smoking, tobacco, electronic cigarette, vaping device, hookah pipe or any other type of smoking device paraphernalia, regardless of square footage uses, is subject to the restrictions in this section.
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SECTION 2. Repealer. All ordinances made in conflict with this Ordinance are hereby repealed.

SECTION 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any Court, such portion or application shall be deemed a separate, distinct, and independent

provision, and such holdings shall not affect the validity of the remaining portions or application hereof.

SECTION 4. Effective date. This Ordinance shall become effective immediately upon its adoption.

PASSED upon first reading at a regular meeting of the City Council of the City of South Daytona held in the City of South Daytona, Florida, on the _____ day of _____, 2020.

PASSED AND ADOPTED on final reading and public hearing at a regular meeting of the City Council of the City of South Daytona held in the City of South Daytona, Florida on the _____ of _____ 2020.

SIGNED:

William C. Hall, Mayor

ATTEST:

James L. Gillis, Jr., City Manager

CERTIFIED AS TO FORM:

Scott E. Simpson, City Attorney