

**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.
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.

**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 14<sup>th</sup> day of September, 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 29<sup>th</sup> of September 2020.

**SIGNED:**

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William C. Hall, Mayor

**ATTEST:**

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James L. Gillis, Jr., City Manager

**CERTIFIED AS TO FORM:**

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Scott E. Simpson, City Attorney