



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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To: Ande Banks, City Manager
From: Adam Fletcher, Director, Department of Community Development and Harrisonburg Planning Commission
Date: June 11, 2024 (Regular Meeting)
Re: Zoning Ordinance Amendments – To Further Regulate the Location of Tobacco, Smoke, or Vape Shops

Summary:

Zoning Ordinance Amendment	Sections 10-3-24, 10-3-25, 10-3-25.1, 10-3-84, 10-3-87, 10-3-90, 10-3-93, 10-3-97, and 10-3-99
Purpose	Amend several sections of the Zoning Ordinance that would, among other things, define “tobacco, smoke, or vape shop” and prohibit the location of such a use on property within 1,000 feet of any property containing a public or private school or child day care center.
Applicant	City of Harrisonburg
Staff Recommendation	Approval
Planning Commission Recommendation	May 8, 2024 (Public Hearing) Approval (6-0)
City Council	June 11, 2024 (First Reading/Public Hearing) Anticipated June 25, 2024 (Second Reading)

Background:

In 2023, staff internally discussed the idea of restricting the location of tobacco, smoke, or vape shops. In this effort, staff prepared draft regulations to limit the use to particular zoning districts and created maps that helped evaluate the impact of prohibiting such businesses from operating on property that was 1,320 feet (a quarter mile) or 2,640 feet (a half mile) from public and private schools or child day care centers. Staff had planned to discuss the draft regulations with Planning Commission with the hope to receive guidance from them regarding the appropriate distance they believed tobacco, smoke, or vape shops should be located from public or private schools or child day care centers.

During its 2024 Regular Session, the General Assembly passed and the Governor approved HB 947, which specifies that localities cannot restrict the location of tobacco, smoke, or vape shops to more than 1,000 feet from public or private schools or child day care centers. For more information, visit Virginia’s Legislative Information System (LIS) – 2024 Session – HB 947 Local government; regulation by ordinance for locations of tobacco products, etc. at <https://lis.virginia.gov/cgi-bin/legp604.exe?241+sum+HB947>.

Key Issues:

Currently, the Zoning Ordinance (ZO) considers tobacco, smoke, or vape shops as a mercantile establishment and thus they have been permitted where general retail uses are permitted, which mainly includes the B-1, Central Business District, the B-2, General Business District, and on R-5-zoned property with an approved special use permit (SUP). City staff is proposing to amend the ZO Sections 10-3-24, 10-3-25, 10-3-25.1, 10-3-84, 10-3-87, 10-3-90, 10-3-93, 10-3-97, and 10-3-99. The proposed amendments would define “tobacco, smoke, or vape shop” and establish it as a principal use, distinguishing it from other mercantile uses, allowing it by right in the B-1 and the B-2 districts while also allowing them with an approved SUP in the M-1, General Industrial District. In all three districts, the use would be prohibited on property within 1,000 feet of any property containing a public or private school or child day care center. The proposed amendments would also create off-street vehicle and bicycle parking requirements for both uses. (NOTE: In a separate staff report, staff is simultaneously proposing similar ZO amendments associated with “skill game locations.” Refer to the other staff report for specifics associated with those amendments.)

The entirety of the proposed ZO amendments is provided within the attached document titled “Proposed Zoning Ordinance Amendments Regarding Tobacco, Smoke, or Vape Shops and Skill Game Locations.” For ease of reference, the proposed definition for “tobacco, smoke, or vape shop” is shown below:

Tobacco, smoke, or vape shop: A business involving the sale or sampling of tobacco products, nicotine vapor products, alternative nicotine products, and hemp products, as those terms are defined in the Code of Virginia §18.2-371.2, and any kratom products as regulated by the Code of Virginia §59.1-200, and where such products are 25% or more of the store’s total inventory or 15% or more of the store’s total display area.

If the amendments are approved as currently drafted, individuals wanting to establish a new tobacco, smoke or vape shop must ensure they are locating on property zoned B-1 or B-2 or on M-1 property with an approved SUP, but only if the property is not located within 1,000 feet of a public or private school or child day care center.

With regard to existing tobacco, smoke, or vape shops, depending upon a site’s vicinity to a public or private school or child day care center, the amendments either would have no effect on their operation or some businesses would become nonconforming. Also note that any existing or new tobacco, smoke, or vape shop could later become nonconforming if a public or private school or child day care center locates within 1,000 feet of the business.

Note that child day care centers differ from minor and major family day homes. The ZO defines “child day care center” as:

A regularly operating service arrangement for two (2) or more children under the age of thirteen (13), where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision and well-being of a child for less than a twenty-four-hour period, in a facility that is not the residence of the provider or of any of the children in care. A nursery school shall be considered to be a child day care center.

Examples of child day care centers include the Harrisonburg-Rockingham Child Day Care Center and Minnieland Academy at Harrisonburg. Note that the distance requirement in the proposed ordinance is not associated with locations of minor and major family day homes, which are often located in residential districts and within a home of the provider or of any of the children, who receive care.

Included in the packet of information for the proposed ZO amendment is a map titled Potential Skill Game Locations and Tobacco, Smoke, or Vape Shops. The map demonstrates parcels that, if the amendments are approved, *might* be able to contain tobacco, smoke, or vape shops. The map is likely not 100 percent accurate as it might not have incorporated all known public or private schools or child day care centers. When a new tobacco, smoke, or vape shop is proposed to be located in the City, zoning staff would verify at that time that no public or private schools or child day care centers are located within 1,000 feet of the property. The map also shows the addresses of business license locations reported to be tobacco, smoke, or vape shops. As shown on the map, if a parcel is identified as B-1 (colored red), B-2 (colored orange), or M-1 (colored brown), then these sites might be able to contain tobacco, smoke, or vape shops either by right or as required with an approved SUP.

On the map, if a green dot, which represents a site reported as a tobacco, smoke, or vape shop, is shown on a red (B-1) or orange (B-2) parcel, then the proposed ZO amendments might not impact their current operation. However, if a green dot is shown in a gray-colored area, that site might become nonconforming and so long as it continues to meet code requirements for nonconforming abilities, it can be maintained.

Environmental Impact:

N/A

Fiscal Impact:

N/A

Prior Actions:

N/A

Alternatives:

- (a) Approve the Ordinance amendments;
- (b) Approve the Ordinance amendments with modifications; or
- (c) Deny the Ordinance amendments.

Community Engagement:

As required, the request was published in the local newspaper twice advertising for Planning Commission’s public hearing and twice advertising for City Council’s public hearing. The advertisement was published as shown below:

Zoning Ordinance Amendment – To add Skill Game Locations and Tobacco, Smoke or Vape Shop Uses

Public hearing to consider amending the Zoning Ordinance by creating new definitions and uses called “Skill game (including skill game machine)”, “Skill game location”, and “Tobacco, smoke, or vape shop”, to create off-street vehicle and bicycle parking requirements, and to establish location

requirements for the new uses. It is proposed that neither skill game locations nor tobacco, smoke, or vape shops shall be located on or otherwise operate on any property within 1,000 feet of any property containing a public or private school or child day care center.

In addition, a notice was provided on the City's website at <https://www.harrisonburgva.gov/public-hearings>.

Although not required, prior to both the Planning Commission and City Council public hearings, staff sent notices to each property owner and physical address of business license locations reported to be tobacco, smoke, or vape shops. Essentially, these are the sites identified on the map provided in the packet. (Note: It is possible that there are convenience stores and other types of uses that might meet the proposed definition of a tobacco, smoke, or vape shop that would not have received a notice.)

Recommendation:

Staff recommends alternative (a) approval of the Zoning Ordinance amendments.

Attachments:

- Extract from Planning Commission
- Proposed Zoning Ordinance Amendments Regarding Tobacco, Smoke or Vape Shops and Skill Game Locations
- Map Titled: Potential Skill Game Locations and Tobacco, Smoke, or Vape Shops
- Copy of Notice of Public Hearing sent to the physical address of, and the property owners of, known tobacco, smoke, or vape shops for City Council Meeting
- Copy of Notice of Public Hearing sent to the physical address of, and the property owners of, known tobacco, smoke, or vape shops for Planning Commission Meeting

Review:

Planning Commission recommended approval (6-0) of the Zoning Ordinance amendments. (Vice Mayor Dent was absent.)