

MEMORANDUM

DATE: April 5, 2023

TO: The Planning Commission

FROM: Christy H. Parrish, Zoning Administrator

SUBJECT: ORD-23-0001. Amendments to the Zoning Ordinance Regarding Vape and Smoke Shops

At its meeting on January 24, 2023, the Board of Supervisors adopted an Initiating Resolution to consider possible amendments to the James City County Zoning Ordinance (the “Ordinance”) to require vape and smoke shops to obtain a Special Use Permit (SUP) (Attachment No. 2).

Staff has received numerous calls from citizens regarding vape and smoke shops in the County. Specifically, citizens have voiced concerns over the location of these shops in close proximity to schools and the Toano Commercial Historic District. Additionally, staff has received complaints of non-compliant lights on the exterior of windows or buildings and of individuals smoking outside the retail store near other places of business.

Uses listed in each Zoning District are either permitted by-right or permitted by an SUP. The SUP process allows the Planning Commission and the Board of Supervisors to consider whether a proposed establishment will adversely affect the health, safety, or welfare of persons residing or working on the premises or in the neighborhood, will impair the character of the district or adjacent districts, will be incompatible with the Comprehensive Plan of James City County, will likely reduce or impair the value of buildings or property in surrounding areas, and whether such establishment or use will be in substantial accordance with the general purpose and objectives of the Ordinance.

The current Ordinance generally permits vape and smoke shops under the retail and service stores use category which includes tobacco and pipes stores. Retail sales of tobacco and pipes are permitted by-right in the R-4, Residential Planned Community, LB, Limited Business, B-1, General Business, M-1, Limited Business/Industrial, PUD, Planned Unit Development, MU, Mixed Use, and EO, Economic Opportunity Districts.

Additionally, retail stores and shops are defined as “buildings for display and sale of merchandise at retail or for the rendering of personal services (but specifically exclusive of coal, wood and lumber yards) such as the following which will serve as illustration: Drug store, newsstand, food store, candy shop, milk dispensary, dry goods and notions store, antique shop and gift shop, hardware store, household appliance store, furniture store, florist, optician, music and radio store, tailor shop, barber shop and beauty shop.”

Staff is aware of the following existing retail shops in the County:

- | | |
|----------------------------------|-------------------------|
| 1. Williamsburg Tobacco Outlet 1 | 5601 Richmond Road |
| 2. Williamsburg Tobacco Outlet 2 | 5251 John Tyler Highway |
| 3. Williamsburg Tobacco Outlet 3 | 240 McLaws Circle |
| 4. Palace One Stop Shop | 4385 Ironbound Road |
| 5. Vape Zone | 4854 Longhill Road |
| 6. Déjà Vu Smoke Shop | 5242 Olde Towne Road |
| 7. Super Tobacco and Vapes | 6528 Richmond Road |
| 8. Super Smoke and Vape | 7828 Richmond Road |
| 9. Havana Connections | 4920 Courthouse Street |

Staff understands that the purpose of the Initiating Resolution and this Ordinance amendment is to define and classify vape and smoke shops as a standalone specially permitted use and ensure all associated or accessory uses are addressed.

Should the Ordinance be amended to specially permit vape and smoke shops, the existing stores will become non-conforming. Section 24-629 of the Ordinance (Continuation of nonconforming uses) states that “a nonconforming use may continue as it existed when it became nonconforming provided however, if any nonconforming use is discontinued for a period of two years, it shall lose its nonconforming status and any further use shall be required to conform to the provisions of this chapter.”

In January 2023, the City of Williamsburg amended its Zoning Ordinance to require vape and smoke shops obtain an SUP in various commercial districts. Staff surveyed several other localities and found that most permit vape and smoke shops as a general retail use.

Staff presented materials at the March 9, 2023, meeting of the Policy Committee and recommended the following changes to the Ordinance to address this directive:

- Add new definitions for vape/smoke shops and vape/smoke lounges within Section 24-2, Definitions.
- Amend the existing “retail stores and shop” definition to exclude vape/smoke shops and vape/smoke lounges within Section 24-2, Definitions.
- Remove “tobacco and pipe” from the retail and service stores use category in the R-4, Residential Planned Community, LB, Limited Business, B-1, General Business, M-1, Limited Business/Industrial, PUD, Planned Unit Development, MU, Mixed Use, and EO, Economic Opportunity Districts.
- Add vape/smoke shop and vape/smoke lounge as a specially permitted use in the R-4, Residential Planned Community, LB, Limited Business, B-1, General Business, M-1, Limited Business/Industrial, PUD, Planned Unit Development, MU, Mixed Use, and EO, Economic Opportunity Districts.

The Policy Committee voted to recommend approval of the proposed changes to the Planning Commission with a few minor additions. Furthermore, the Policy Committee also discussed that it would favor including a compliance review condition to any future SUP request similar to short-term rentals to address any non-compliant activity.

Recommendation

Staff recommends that the Planning Commission recommend approval of the attached Ordinance to the Board of Supervisors.

CHP/ap

ORD23-1AmdVapeSm-mem

Attachments:

1. Draft Ordinance
2. Initiating Resolution