



AGENDA REPORT

To: Planning Commission

From: Ben Song, Community Development Director

Agenda: February 8, 2022 Planning Commission Meeting

Item: Zoning Ordinance Text Amendment (A-22-001) to Regulate Smoke Shops in Johns Creek

Item Summary

In order to promote quality of life in Johns Creek and protect the health of residents, staff recommends defining “Cigar Shop” and “Smoke Shop” in the City of Johns Creek Zoning Ordinance; adding “Cigar Shop” to the C-1 Zoning District; and adding “Smoke Shop” to the C-2 Zoning District, by modifying Article III “Definitions” and Article IX “Community Business District.”

Background

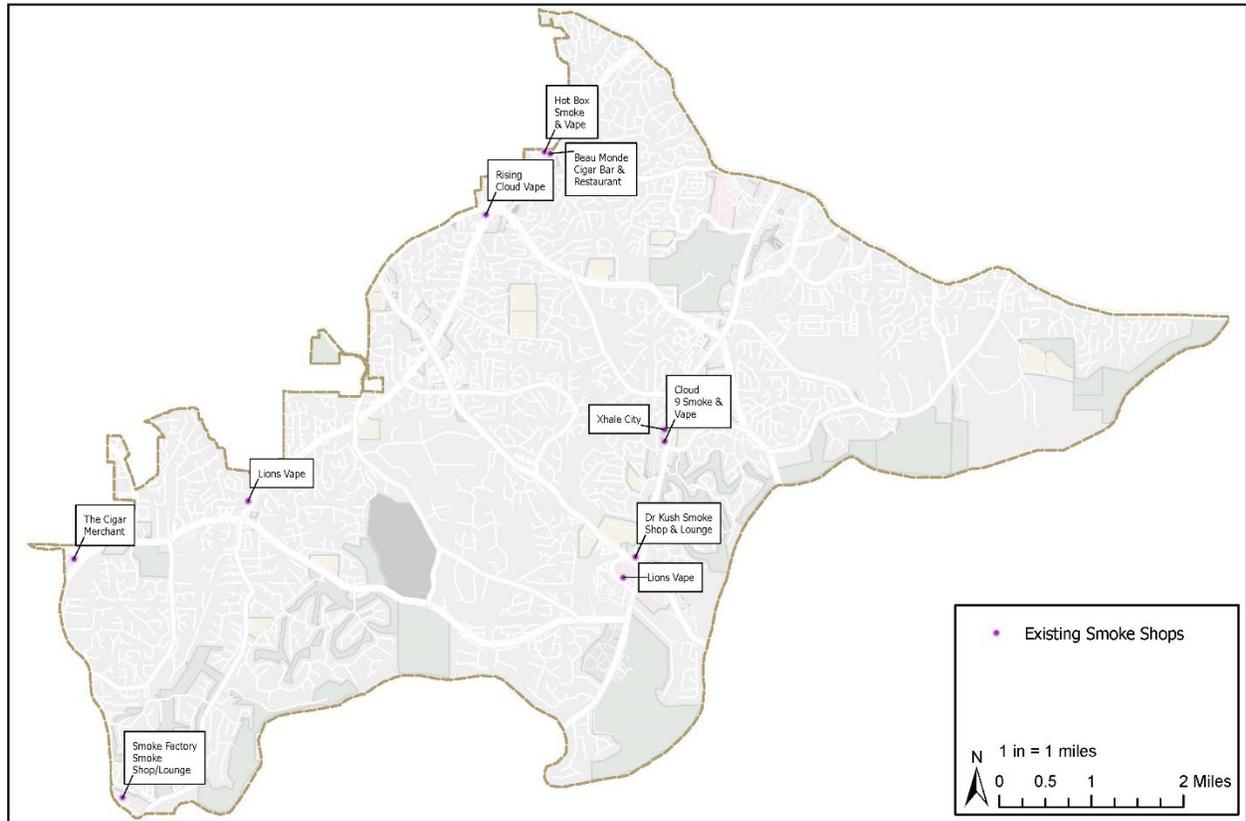
The Georgia Department of Public Health warns against the use of e-cigarettes and the negative health impacts associated with nicotine and other chemicals. The U.S. Food and Drug Administration has issued warnings against retailers targeting illegal sales to youth with kid-friendly marketing. In December 2019, reflecting the modern understanding of the detrimental impacts of tobacco and nicotine addiction, the Federal Government raised the minimum age to 21 for the purchase of tobacco products.

In order to promote quality of life in Johns Creek and protect the health of residents, Council adopted a Zoning Ordinance Text Amendment (Ordinance 2019-07-16) on July 22, 2019, to limit the sale of vape and vape-related products as an accessory use in commercial zoning districts (C-1 and C-2), by only allowing 25% of a business’s floor space to be dedicated for the sale or advertisement for sale of vape and vape-related products.

However, some new business applicants have found ways to subvert the new regulation. While reduction in floor area dedicated to vapes and vape-related products were complied, these businesses expanded their product offering to become “smoke shops,” also selling cigarettes, cigars, e-cigarettes, hookahs, hookah accessories (glass, hoses, plates, foil, charcoal, tips, flavors, coal burners), water pipes, pipe cleaners, hemp wraps, grinders and trays, lighters, torches, and/or other tobacco paraphernalia or alternative nicotine products. Additionally, many of these businesses also included a lounge area to further promote the use of nicotine products on site.

Currently, there are 10 smoke shops operating in the city (an increase from 8 in 2019). These shops are located along major roadways and in major commercial nodes of the City: the Medlock Bridge Road corridor, Medlock Bridge Road and State Bridge Road, Douglas Road and Jones Bridge Road, Jones Bridge Road

and Abbotts Bridge Road, Jones Bridge Road and Old Alabama Road, Haynes Bridge Road and Nesbit Ferry Road/Old Alabama Road, and Barnwell Road and Holcomb Bridge Road (location map below).



In response to a surge in smoke shop inquiries, at the August 30 City Council meeting, the Mayor and Council imposed a 6-month moratorium on accepting and processing business tax certificates, building permit applications, and issuance of certificates of occupancy for vape and smoke shops throughout the City, to allow staff the time required to research and evaluate appropriate zoning regulations.

Update

Staff reviewed ordinances from twelve adjacent and nearby jurisdictions related to smoke shops, and also reached out to their planning staff for in-depth discussions. Six jurisdictions (Alpharetta, Duluth, Forsyth County, Gwinnett County, Milton and Norcross) impose various restrictions (Attachment 1) on the sale and use of smoking-related products. These restrictions include:

- Banning the use from all districts (Milton);
- Requiring a conditional or special use permit which requires a City Council or Board of Commissioners hearing (Alpharetta, Duluth, Forsyth County);
- Limiting the use to only industrial or high-intensity commercial zoning districts (Alpharetta, Gwinnett County, Norcross);
- Imposing a distance separation requirement (Alpharetta, Forsyth County, Norcross)

The remaining six jurisdictions (Brookhaven, DeKalb County, Dunwoody, Peachtree Corners, Roswell, Sandy Springs) currently do not differentiate smoke shops from general retail, allowing for this use to occur in

commercial, mixed-use and industrial districts (Attachment 2). However, several jurisdictions expressed their concerns over the growing number of smoke/vape shops and foresee an upcoming text amendment in their respective jurisdiction.

Analysis

Allowing for smoke shops in the higher-intensity C-2 Zoning District would be appropriate, as there are only four C-2 zoned properties in Johns Creek, and all have specific uses regulated by zoning conditions and/or site plans. Therefore, even if smoke shops were made a permitted use in C-2 zoning, no property could currently allow for smoke shops without requiring rezoning. Additional distance separation requirements from churches, schools, government facilities, and other smoke shops would further protect the health of residents.

Cigar shops would be excluded from the smoke shop category and be separately defined and regulated.

Staff Recommendations

Staff recommends defining “Cigar Shop” and “Smoke Shop,” adding “Cigar Shop” to the C-1 Zoning District, and adding “Smoke Shop” to the C-2 Zoning District, by modifying Article III “Definitions” and Article IX “Community Business District” of the City of Johns Creek Zoning Ordinance, as follows:

1. Add definitions of “Cigar Shop” and “Smoke Shop”

3.3.3.C.

Cigar Shop. *Any business establishment that sells full-sized, hand-rolled cigars, and derives at least 60 percent of its total annual gross sales from the sale of full-sized, hand-rolled cigars and cigar-related products for consumption on or off the premises. Such retail establishments shall not advertise, display, store, sell or permit the on-premises use of:*

- 1) Vape products, including electronic smoking devices, component parts or e-liquids;*
- 2) Hookahs pipes and products, glass pipes or bongs;*
- 3) Cigarettes; or*
- 4) Unrolled tobacco or machine rolled tobacco products.*

3.3.19.S.

Smoke Shop. *Any business establishment that dedicates to the display, sale, distribution, delivery, offering, furnishing, marketing or use of tobacco, tobacco products, or alternative nicotine products/instruments, or any combination thereof, including but not limited to cigarettes, cigars, e-cigarettes, hookahs, vapes. This definition shall not include cigar shops, or any grocery stores, gas stations or similar retail use that only sells conventional cigars, or alternatively sells cigarettes only as an accessory sale (ten percent or less of total sales).*

Such businesses shall be located within a retail shopping center and shall not be allowed within 100 yards of any Church, Temple or Place of Worship, or within 200 yards of any School, College, University or Governmental Facility, or within 500 yards of another smoke shop. Distance shall be measured by a straight line without regard to intervening structures or objects, from the front door of the smoke shop to the closest point on a boundary of any parcels containing a Church, Temple or Place of Worship, School, College, University, Government Facility, or another smoke shop.

2. Add “Cigar Shop” to C-1 Zoning District, and Limit “Smoke Shop” to C-2 Zoning District

Section 9.1. C-1 Community Business District

Section 9.1.2.A. Permitted Uses.

1. Amusements, Indoor
2. Art Galleries
3. Assembly Halls
4. Automotive Parking Lots
5. Automotive Specialty Shops
6. Catering, Carry-out and Delivery
7. Church, Temple or Other Place of Worship
8. Cigar Shops
- ~~9.9.~~ Clinics
- ~~9.10.~~ Convalescent Center/Nursing/Hospice
- ~~10.11.~~ Day Care Facilities
- ~~11.12.~~ Delicatessens
- ~~12.13.~~ Financial Establishments
- ~~13.14.~~ Funeral Homes
- ~~14.15.~~ Garage, Automobile Repair except painting, body repair and overhaul of major components
- ~~15.16.~~ Group Residences
- ~~16.17.~~ Gymnasiums
- ~~17.18.~~ Hotels
- ~~18.19.~~ Health Club/Spa
- ~~19.20.~~ Laundromats
- ~~20.21.~~ Landscaping Business, Garden Center
- ~~21.22.~~ Laundry and Dry Cleaning Shops
- ~~22.23.~~ Lawn Service Businesses
- ~~23.24.~~ Libraries
- ~~24.25.~~ Communication Services
- ~~25.26.~~ Millinery or Similar Trade whenever products are sold retail, exclusively on the site where produced.
- ~~26.27.~~ Motels
- ~~27.28.~~ Museums
- ~~28.29.~~ Offices
- ~~29.30.~~ Parking Garages/Decks
- ~~30.31.~~ Parking Lots
- ~~31.32.~~ Personal Care Homes, Congregate
- ~~32.33.~~ Personal Services including barber, beauty
- ~~33.34.~~ Pet Grooming (No overnight stay)
- ~~34.35.~~ Photography Studios
- ~~35.36.~~ Plant Nurseries
- ~~36.37.~~ Printing Shops, Convenience
- ~~37.38.~~ Repair Shops not involving any manufacturing on the site
- ~~38.39.~~ Research Laboratories

~~39.40.~~ Restaurants

~~40.41.~~ Retail Stores or Shops

~~41.42.~~ School of Business, Dance, Music or similar schools

~~42.43.~~ Service Stations except that repair and service offerings shall not include painting, body repair nor overhaul of major components, and no portion of the site shall be used for the display of cars for sale.

~~43.44.~~ Stadiums

~~44.45.~~ Theaters

~~45.46.~~ Recycling Centers, Collecting

Section 9.2. C-2 Community Business District

Section 9.2.2.A. Permitted Uses.

1. Any Use Permitted in the C-1 District
2. Automotive Garage
3. Automotive Repair Garage
4. Automobile & Light Truck Sales/Leasing
5. Batting Cage, Outdoor
6. Bowling Alley
7. Brewery
8. Car Wash
9. Check Cashing Establishment
10. Drive-in Theater
11. Garage, Automobile Repair
12. Landscaping Business
13. Lawn Service Business
14. Laundry and/or Dry Cleaning Plant Distribution Center. Not including processing, fabrication or manufacturing.
15. Pawn Shop
16. Plant Nursery
17. Plumbing Shop associated with retail sales
18. Radio and Television Stations
19. Service Establishments
20. Skating Rink
- ~~21. Smoke Shop~~
- ~~21.22.~~ Tinsmithing Shop associated with retail sales

3. Remove Vape Shop Restrictions Per Ordinance 2019-07-16

Section 9.1. C-1 Community Business District

Section 9.1.2.B. Accessory Uses.

Accessory Uses. Structures and land may be used for uses customarily incidental to any permitted use. Automobile and/or moving truck rental may be used in accessory only to an associated permitted use. Not more than 45 percent of the floor area of a building or land may be devoted to storage incidental to primary uses. ~~Not more than twenty-five percent of the floor area of a business premises may be devoted to the sale or advertisement for sale of vape or vape-related products.~~

Section 9.2. C-2 Community Business District

Section 9.2.2.B. Accessory Uses.

Accessory Uses. Structures and land may be used for uses customarily incidental to any permitted use. ~~Not more than twenty five percent of the floor area of a business premises may be devoted to the sale or advertisement for sale of vape or vape-related products.~~

On December 8, 2021, Staff presented the proposed text amendment to the iHeart Johns Creek Advisory Committee, and received unanimous support for staff's recommended amendment to the Zoning Ordinance to regulate smoke shops.

Attachments

1. Research on Jurisdictions with Smoke Shop Regulations
2. Research on Jurisdictions without Smoke Shop Regulations

Attachment 1: Jurisdictions with Smoke Shop Regulations

Jurisdiction	Category	Definition(s)	Restriction(s)
Alpharetta	Smoke Shop and Tobacco Store	<p>Any business premises dedicated to the display, sale, distribution, delivery, offering, furnishing, or marketing of tobacco, tobacco products, or instruments, vape products, or any combination thereof.</p> <p>"Smoke shop and tobacco store" shall not include any grocery store, supermarket, convenience store or similar retail use that only sells conventional cigars, cigarettes, vape or tobacco as an ancillary sale (ten percent or less of total sales).</p>	<p>By-right Use in:</p> <ul style="list-style-type: none"> • L-1: Industrial <p>Conditional Use in:</p> <ul style="list-style-type: none"> • C-1: Neighborhood Commercial • C-2: General Commercial <p>Location Requirements:</p> <ul style="list-style-type: none"> • located within a retail center • Not allowed within 2,000 feet to a school, religious institution, government building, park, residential dwelling or each other • Distance measured from premises to premises
Duluth	Cigar, Tobacco and Other Smoker's Supply Stores	None	Special Use Permit in C-2 General Business
Forsyth	Smoke shops; Vapor cigarette shops; Non-traditional tobacco paraphernalia shops	<p>Non-traditional tobacco paraphernalia: Non-traditional instruments designed so to facilitate the smoking, consumption or ingestion of tobacco or nicotine in any form (such as bongs, hookah pipes, or faux jewelry, bracelets, or necklaces commonly associated with tobacco, vaping, or drug use, with one purpose of such items being the inhalation or ingestion of tobacco or drugs); provided, however, that the term "non-traditional tobacco paraphernalia" shall exclude alternative nicotine products, cigarette papers or wrappers, blunt wraps, traditional tobacco pipes (such as brand names Briar and Meerschaum), holders, cigarette rolling machines, or other products, devices, or substances used for the purpose of making tobacco cigarettes</p> <p>Alternative Nicotine Products: An electronic product or device that employs an electronic heating element, power source, electronic circuit, battery, or other electronic, chemical, or mechanical means to produce a vapor that delivers nicotine to the person inhaling from the device, including e-cigarettes, e-cigars, IQOS, and e-pipes, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, but not including e-hookahs or e-bongs</p>	<p>Conditional Use in:</p> <ul style="list-style-type: none"> • NS: Neighborhood Shopping • UV: Urban Village • CBD: Commercial Business • HB: Highway Business • OCMS: Office Commercial Multiple Story <p>Location Requirements:</p> <ul style="list-style-type: none"> • Not allowed within 100 yards of any church building or within 200 yards of any school building, educational building, school grounds, or college campus • Distance measured from the front door of the premise to the property line of the tract upon which is located the nearest church building, school building, educational building, school grounds or college grounds or college campus building

Jurisdiction	Category	Definition(s)	Restriction(s)
Gwinnett	Smoke Shop or Novelty Shop	None	By-right Use in: <ul style="list-style-type: none"> • C-2: General Business • C-3: Highway Business
Milton	Vape Shop	<p>Any business whose principal product line for retail sale is alternative nicotine products or vape juice, or both. For the purposes of this section, alternative nicotine products refer to any products or devices that employ an electronic heating element, power source, electronic circuit, battery, or other electronic, chemical, or mechanical means to produce a vapor that delivers nicotine to the person inhaling from the device, including electronic cigarettes, electronic cigars, electronic hookahs, electronic bongos and electronic pipes, whether manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar, or electronic pipe. For the purposes of this section, vape juice refers to any liquid that contains compounds containing pharmaceutical grade vegetable glycerin, propylene glycol, nicotine, food-grade flavoring, and water, and can be used for vaping by means of an alternative nicotine product. For purposes of this code section, "principal" shall mean that alternative nicotine products, vape juice, or both constitute at least 25 percent of the business's aggregate retail sales</p>	Use prohibited in all zoning districts
Norcross	Hookah and smoking related shops	Any shop that involves the onsite sale or use of smoking related products, including hookah, vape, cigarettes, and cigars	By-right Use in: <ul style="list-style-type: none"> • C-1: Neighborhood Business • C-2: General Business • HX: Historic Mixed-Use • NX: Neighborhood Mixed-Use • CAR: Commercial Auto Related Business • CX: Community Mixed-Use • BH: Buford Highway Location Requirements: <ul style="list-style-type: none"> • Not allowed within 500 feet of a school, daycare, park, place of worship or playground • Distance measured from premises to premises, in the shortest path

Attachment 2: Jurisdictions without Smoke Shop Regulations

Jurisdiction	Districts – Permitted Use	Districts – Limited Use
Brookhaven	MX1: Neighborhood Mixed-Use; MX2: Community Mixed-Use; CX: Corridor Mixed-Use; NS: Neighborhood Shopping; C-1: Local Commercial; C-2: General Commercial; O-D: Office-Distribution; O-C-R: Office-Commercial-Residential; M: Industrial; PR-1: Peachtree Road-1; PR-2: Peachtree Road-2; PR-3: Peachtree Road-3	None
DeKalb	C-1: Local Commercial; C-2: General Commercial; OD: Office-Distribution; M: Light Industrial; MU-1: Mixed-Use Low Density; MU-2: Mixed-Use Low-Medium Density; MU-3: Mixed-Use Medium Density; MU-4: Mixed-Use High Density; MU-5: Mixed-Use Very High Density	None
Dunwoody	O-D: Office-Distribution; OCR: Office-Commercial-Residential; NS: Neighborhood Shopping; C-1: Local Commercial; CR-1: Commercial-Residential Mixed-Use; C-2: General Commercial	None
Peachtree Corner	C-1: Neighborhood Business District; C-2: General Business District; C-3: Highway Business District	None
Roswell	NX: Neighborhood Mixed Use; CX: Commercial Mixed Use; SH: Shopfront Mixed Use CC: Commercial Corridor; CH: Commercial Heavy; DX: Downtown Mixed Use DS: Downtown Shopfront; DH: Downtown House; IX: Industrial Flex	PV: Parkway Village OR: Office Residential OP: Office Park
Sandy Springs	RX: Residential Mixed Use; OX: Office Mixed Use; CX: Commercial Mixed Use; SX: Shopfront Mixed Use; TX: Transit Mixed USE; CS: City Springs IX: Industrial Mixed Use; CC: Commercial Corridor; PX: Perimeter Mixed Use, Low/Mid-Rise; PM: Perimeter Mixed Use, High-Rise	None