

AMENDING CHAPTER 23 "UNIFIED DEVELOPMENT ORDINANCE", ARTICLE 7 "SUPPLEMENTAL DISTRICT REGULATIONS", SUBSECTION 7.17.02 "PERMITTED ZONING DISTRICTS AND SETBACK REQUIREMENTS", OF THE CITY OF DEKALB, ILLINOIS MUNICIPAL CODE AS IT PERTAINS TO RETAIL TOBACCO STORES.

WHEREAS, the City of DeKalb (the "City") is a home rule unit pursuant to Article VII, Section 6(a) of the 1970 Illinois Constitution and may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the City wishes to amend Article 7.17 "Retail Sale of Tobacco and Related Products" of the City's Unified Development Ordinance (the "UDO") to add retail tobacco stores as a special use in the "PD-C" and "PD-I" Districts, clarify uses that cannot be located within 200 feet of a retail tobacco store, and allow smoking in retail tobacco stores only if the business is located in a freestanding building (the "Text Amendment"); and

WHEREAS, on December 19, 2022, pursuant to due notice, the City's Planning and Zoning Commission (the "PZC") held a public hearing regarding the Text Amendment, made findings of fact, and recommended approving the Text Amendment; and

WHEREAS, the City's corporate authorities adopt and incorporate by reference the PZC's findings of fact and recommendation and find that it is in the City's best interests for the protection of the public health, morals and welfare to adopt the Text Amendment; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

SECTION 1: The recitals to this ordinance are adopted and incorporated herein as Section One to this ordinance.

SECTION 2: The City's corporate authorities adopt and approve an amendment to Chapter 23 "Unified Development Ordinance", Article 7.17 "Retail Sale of Tobacco and Related Products" of the City's Municipal Code as set forth in Exhibit A attached hereto and incorporated herein by reference.

SECTION 3: This Ordinance and each of its terms shall be the effective legislative act of a home rule municipality without regard to whether such ordinance should (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law, or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the City's corporate authorities that to the extent this Ordinance is inconsistent with any non-preemptive state law, this Ordinance shall supersede state law in that regard within its jurisdiction.

SECTION 4: This Ordinance shall be in full force and effect from and after its passage and approval as provided by law.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a Regular meeting thereof held on the 9th day of January 2023 and approved by me as Mayor on the same day. Passed on First Reading by an 8-0 roll call vote. Aye: Morris, Larson, Smith, Perkins, McAdams, Verbic, Faivre, Barnes. Nay: None. Second Reading waived by an 8-0 roll call vote. Aye: Morris, Larson, Smith, Perkins, McAdams, Verbic, Faivre, Barnes. Nay: None.




COHEN BARNES, Mayor

ATTEST:



Ruth A. Scott, Executive Assistant

EXHIBIT A

ARTICLE 7

SUPPLEMENTAL DISTRICT REGULATIONS

7.17 Retail Sale of Tobacco and Related Products

7.17.01 Purpose and Intent

1. This Ordinance is intended to protect the public health, safety, welfare and morals by establishing regulations to restrict the location of and/or create a setback between establishments which primarily engage in the retail sale of tobacco or similar products, and incompatible uses.
2. This Ordinance shall apply to any Retail Tobacco Store as defined in Chapter 64 of the City Code of Ordinances. The Definition of a Retail Tobacco Store, for purposes of this Ordinance, shall be as follows:

“Retail Tobacco Store” means a retail store (or a divisible portion of a facility which is capable of being separated by virtue of walls, doors, partitions or other full or partial enclosures, which store or portion thereof satisfies the other requirements herein) which derives more than thirty (30) percent of its gross revenue from the sale of tobacco or nicotine products and accessories, inclusive of any device contemplated within the definition of “Smoking” below, or which dedicates more than twenty-five (25) percent of its total floor area or public display area to the storage or sale of such items.

“Smoking” means a) inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form; b) inhaling or exhaling from, turning on, powering, ingesting or utilizing in any form any device intended for the atomization, charring, burning, piezoelectronic ignition of or ingestion of tobacco products or nicotine in any gaseous, smoke, aerosol, vaporous or other similar form, including but not limited to the use of any e-cigarette, personal vaporizer used with nicotine or tobacco derivatives, electronic nicotine delivery system, e-puffer, cartomizer or other similar device; c) use of any other device intended for the gaseous, smoke, aerosol, vaporous or other similar airborne ingestion of tobacco, tobacco derivatives, nicotine, or nicotine derivatives; or d) completing any of the foregoing actions utilizing any form of smoked, aerosolized, ionized, vaporous or similar airborne ingestion of marijuana, cannabis or any derivative thereof. Smoking shall not include non-airborne forms of tobacco, nicotine or medical cannabis ingestion such as use of chewing tobacco or use of nicotine patches.

7.17.02 Permitted Zoning Districts and Setback Requirements

1. Retail Tobacco Stores shall be a prohibited use in all zoning districts unless expressly permitted herein.
2. Retail Tobacco Stores shall be a special use in the following zoning districts: CBD, LC, GC, ORI, LI, HI. A Retail Tobacco Store may also be permitted in the PD-C and PD-I Districts as a special use if the governing Ordinance allows.
3. No Retail Tobacco Store shall be located within two hundred (200) feet of the boundary of any residentially zoned property containing a dwelling unit or a parcel occupied by a: i) nursery school, pre-school, primary, intermediate, or secondary school, daycare center, daycare home, or an academic building or residence hall of a State university, public or private kindergarten, elementary, middle, junior high or high school;
4. No Retail Tobacco Store shall be located within two hundred (200) feet of the boundary of any other Retail Tobacco Store, whether operating as a permitted, special, or legally non-conforming use.

4.5. Smoking is allowed in a Retail Tobacco Store only if the business is located in a freestanding structure occupied solely by the business and emissions from smoking do not migrate into any area where smoking is prohibited under the provisions of Chapter 64 "Smoking Regulations" of the Municipal Code.

5.6. Any violation of applicable building codes or fire life-safety codes or City-imposed inspection requirements shall constitute a violation of any zoning permission or special use permit granted hereunder. Upon a finding that an approved Special Use Permit will or has become unsuitable and/or incompatible in its location as a result of any nuisance or activity generated by the use, the Council shall have the authority to revoke the permit after affording the current property owner the right to be heard through due process or a public hearing with a due process hearing afforded.

~~6. Any violation of applicable building codes or fire life-safety codes or City-imposed inspection requirements shall constitute a violation of any zoning permission or special use permit granted hereunder. Upon a finding that an approved Special Use Permit will or has become unsuitable and/or incompatible in its location as a result of any nuisance or activity generated by the use, the Council shall have the authority to revoke the permit after affording the current property owner the right to be heard.~~

7.17.03 Development Review Standards

1. Any party seeking to open a Retail Tobacco Store shall be required to file all documents which would be required to demonstrate compliance with the terms of this Code, and any documents required to apply for and obtain a review of a proposed special use permit.
2. After a pre-application meeting with the Community Development Director or their designee, an applicant for a Special use shall be required to submit plans and documents as deemed necessary, including, but not limited to, a Plat of Survey, a Site Plan, Engineering Plan, Architectural Plans and Elevations, Building Material Samples, Lighting Plan, Signage Plan, Business and Operational Plan, and Security Plan. Given the unique challenges and public safety threats posed by this use, the applicant shall also be required to file such additional documentation and provide such additional information as may be required by the City Manager, Community Development Director, Chief of Police, or Fire Chief or their designees.

