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CHIEF ADMINISTRATIVE OFFICER

MEMORANDUM

July 11, 2018

To: Planning Commission

From: Community Development Department

Subject: Alcohol and Tobacco Specialty Store Update CODE-06-18-5446
 Amend Title 15A, Chapter 8, Permitted Land Use Matrix
 by the Commercial, Office, Industrial, Mixed Use,
 Transit Corridor, and Research and Development
 Districts, & Chapter 37, Definitions, Revised Ordinances
 of Sandy City, 2008

HEARING NOTICE: *This item has been noticed on public websites, and in the newspaper at least 10 days prior to the Public Hearing.*

REQUEST

The Sandy City Community Development Department has filed a request to amend Title 15A, Chapter 8, Permitted Land Use Matrix by the Commercial, Office, Industrial, Mixed Use, Transit Corridor, and Research and Development Districts, and Chapter 37, Definitions, Revised Ordinances of Sandy City, 2008. The purpose of the Code Amendment is to amend the existing regulations and definition to match the new Utah Code standards for a Retail Tobacco Specialty Store.

PROPERTY CASE HISTORY	
Case Number	Case Summary
CA#09-Q	On February 12, 2010, the City Council approved Ordinance #10-03, created a new land use category and definition for an Alcohol and Tobacco Specialty Store. This type of land use is only permitted within the Industrial Zone with a number of distance restrictions. The same distance requirements are applicable to a sexually-oriented business.
CODE-5-12-2347	Revised these same sections on based on a 2012 change to state code introducing a new definition and location restrictions.

BACKGROUND

On February 12, 2010 the City Council approved Ordinance #10-03, created a new land use category and definition for an Alcohol and Tobacco Specialty Store. This type of land use is only permitted within the Industrial Zone with a number of distance restrictions.

In 2012, we amended our code again to be in compliance with new state regulations that included revised distance requirements and definitions for Retail Tobacco Specialty Stores.

In the 2018 General Legislative Session, House Bill 324 Tobacco Regulations Amendmend, was approved. Some of the highlighted provisions of this bill include:

- Revises definitions of a Tobacco Retail Specialty Store
- Requires permits through the local Board of Health
- Valid license to sell tobacco products from the State Tax Commission

Staff has also had many recent inquiries of businesses that appear to be tobacco retail specialty stores, but claim to be general retail sales or convenience stores. It has become increasingly difficult to distinguish these types of uses as some of the operators have “blurred the lines” in an attempt to not be subject to the increased regulations on alcohol and tobacco specialty stores. The information provided by business license applicants can be manipulated so as to appear that they would not be classified as Alcohol and Tobacco Specialty Store. This is a situation that has also been observed by the Salt Lake Valley Health Department and other municipalites.

The City Council invoked the pending ordinance doctrine on February 6, 2018 through the adoption of Resolution #18-05C. This allows for time to explore potential code amendedments pertaining to Alcohol and Tobacco Specialty Stores.

ANALYSIS

The proposed code amendment both aligns our regulations with the recent changes to state code and helps clarify the line between general retail sales or convenience stores and alcohol and tobacco specialty stores. These proposed changes would also clarify the existing location restrictions to make them simpler to understand and implement.

The clean version of all final proposed text is shown in Exhibit “A” attached hereto. A full detail of all redlined changes is shown in the attached Exhibit “B”.

NON-CONFORMING USES

This Code Amendment would not create any non-conforming situations.

LAND DEVELOPMENT CODE PURPOSE COMPLIANCE

The Sandy City Land Development Code in 15A-01-03 lists the criteria explaining the intent and purpose of the Ordinance. The purpose is:

15A-01-03 Purpose

This Code is adopted to implement Sandy City’s General Plan and to promote: public health, safety, convenience, aesthetics, welfare; efficient use of land; sustainable land use and building practices; transportation options and accessibility; crime prevention; timely citizen involvement in land use decision making; and efficiency in development review and land use administration. Specifically, this Code is established to promote the following purposes:

1. **General**
 - a. To facilitate the orderly growth and development of Sandy City.
 - b. To facilitate adequate provision for transportation, water, sewage, schools, parks, and other public requirements.
 - c. To stabilize property values.
 - d. To enhance the economic well-being of Sandy City and its inhabitants.
2. **Implementation of General Plan**
To coordinate and ensure the implementation of the City’s General Plan through effective execution of development review requirements, adequate facility and services review and other goals, policies, or programs contained in the General Plan.
3. **Comprehensive, Consistent and Equitable Regulations**
To establish a system of fair, comprehensive, consistent and equitable regulations, standards and procedures for review and approval of all proposed land development within the City.
4. **Efficiently and Effectively Managed Procedures**
 - a. To promote fair procedures that are efficient and effective in terms of time and expense.
 - b. To be effective and responsive in terms of the allocation of authority and delegation of powers and duties among ministerial, appointed, and elected officials.
 - c. To foster a positive customer service attitude and to respect the rights of all applicants and affected citizens.

The proposed Code Amendment will provide for the health, safety and welfare and promote the prosperity, improve the good order, comfort, convenience, and aesthetics of the municipality and its present and future inhabitants, to prevent injury, protect the tax base, protect both urban and nonurban development, protect property values, and promote public peace and safety.

GENERAL PLAN COMPLIANCE

The General Plan encourages appropriate development standards for all uses and zoning categories within Sandy City. This code amendment would further that goal and objective.

STAFF RECOMMENDATIONS

The Community Development Department requests that the Planning Commission forward a positive recommendation to the City Council to adopt the proposed ordinance amendment as shown in Exhibit “A”, attached, for the following reasons:

1. The proposal complies with the Purpose of the Land Development Code as stated in section 15A-01-03.
2. Compliance with the Goals and Policies of the General Plan by establishing appropriate development standards for all uses and zoning categories within Sandy City.

Planner:

Mike Wilcox
Zoning Administrator

Reviewed by:

Exhibit "A"

15A-37-02 "A" Definitions

Alcohol or Tobacco Specialty Store - A commercial establishment that, through signage, floor space allocation and sales revenue, demonstrates it is substantially engaged in the offer and sale of alcohol and/or tobacco products, and any one or more of the following factors:

- i. The sale of alcohol or tobacco products accounts for more than 35% of the total annual gross receipts for the establishment, except as allowed within this Title such as Alcoholic Beverage State Liquor Store and Alcoholic Beverage Package Agency; or
- ii. 20% or more of the public retail floor space is allocated to the offer, display, or storage of tobacco products; or
- iii. 20% or more of the total shelf space (retail display or storage areas) is allocated to the offer, display, or storage of tobacco products; or
- iv. If less than 80% of the total shelf space (retail display or storage areas) is allocated to the offer, display, or storage of other items, products and merchandise unrelated to tobacco products; or
- v. The retail space features a self-service display for tobacco products (as defined in Utah State Code); or
- vi. The name of the business or marketing of the business evidences the establishment as a retail alcohol or tobacco specialty store.

Tobacco product means:

- i. Any cigar, cigarette, chewing tobacco, or electronic cigarette as defined in Utah State Code.
- ii. Any substitute for a tobacco product, including flavoring, or additives to tobacco; and
- iii. Tobacco paraphernalia as defined in Utah State Code.

15A-08-02 Permitted Land Use Matrix by the Commercial, Office, Industrial, Mixed Use, Transit Corridor, and Research and Development Districts

C. Explanatory Notes for Land Use Matrix.

10. This use is not permitted if any part of the proposed/existing building containing the use is within:
 - a. 1,000 feet from any community location (such as public or private kindergarten, elementary, middle, junior high, or high school; licensed child care facility or preschool, trade or technical school, a church, public library, public playground, public park, youth center or other space used primarily for youth oriented activities, a public recreational facility, or a public arcade). Distance requirements from structures for this use shall be measured in a straight line, without regard to intervening structures or zoning districts, from the property line of the community location, or other alcohol or tobacco specialty store.
 - b. 600 feet of any other alcohol or tobacco specialty store and from an agricultural or residential use or residential zoning boundary, beginning at the property line of such use. Distance requirements from zoning districts for this use shall be measured in a straight line, without regard to intervening structures or zoning districts, from the

zoning boundary of a residential or agricultural district to the structure of the alcohol or tobacco specialty store.

- c. 150 feet for the 9000 South Street gateway, as it begins at the western most boundary continuing east to State Street, the distance shall be measured in a straight line from the right-of-way boundary to the property line of the alcohol or tobacco specialty store.

Exhibit "B"

15A-37-02 "A" Definitions

Alcohol or Tobacco Specialty Store - A commercial establishment ~~in which that, through signage, floor space allocation and sales revenue, demonstrates it is substantially engaged in the offer and sale of alcohol and/or tobacco products, and any one or more of the following factors:~~

- i. The sale of alcohol or tobacco products accounts for more than 35% of the total annual gross receipts for the establishment, except as allowed within this Title such as Alcoholic Beverage State Liquor Store and Alcoholic Beverage Package Agency; ~~or-~~
- ii. ~~20% or more of the public retail floor space is allocated to the offer, display, or storage of tobacco products; or Food and beverage products, excluding gasoline sales, is less than 45% of the total annual gross receipts for the establishment; and~~
- iii. ~~20% or more of the total shelf space (retail display or storage areas) is allocated to the offer, display, or storage of tobacco products; or The establishment is not licensed as a pharmacy under Title 58, Chapter 17b, Pharmacy Practice Act.~~
- iv. ~~If less than 80% of the total shelf space (retail display or storage areas) is allocated to the offer, display, or storage of other items, products and merchandise unrelated to tobacco products; or~~
- v. ~~The retail space features a self-service display for tobacco products (as defined in Utah State Code); or~~
- ~~iii.vi.~~ The name of the business or marketing of the business evidences the establishment as a retail alcohol or tobacco specialty store.

Tobacco product means:

- i. Any cigar, cigarette, chewing tobacco, or electronic cigarette as defined in ~~Section 76-10-104~~ Utah State Code.
- ii. Any substitute for a tobacco product, including flavoring, or additives to tobacco; and
- iii. Tobacco paraphernalia as defined in Utah State Code ~~Section 76-10-104.1~~.

15A-08-02 Permitted Land Use Matrix by the Commercial, Office, Industrial, Mixed Use, Transit Corridor, and Research and Development Districts

C. Explanatory Notes for Land Use Matrix.

10. This use is not permitted if any part of the proposed/existing building containing the use is within:
 - a. 1,000 feet from any community location (such as public or private kindergarten, elementary, middle, junior high, or high school; licensed child care facility or preschool, trade or technical school, a church, public library, public playground, public park, youth center or other space used primarily for youth oriented activities, a public recreational facility, or a public arcade). Distance requirements from structures for this use shall be measured in a straight line, without regard to intervening structures or zoning districts, from the property line of the community location, or other alcohol or tobacco specialty store.
 - b. 600 feet of any other alcohol or tobacco specialty store and from an agricultural or residential use or residential zoning boundary, beginning at the property line of such

use. Distance requirements from zoning districts for this use shall be measured in a straight line, without regard to intervening structures or zoning districts, from the zoning boundary of a residential or agricultural district to the structure of the alcohol or tobacco specialty store.

b.c. 150 feet for the 9000 South Street gateway, as it begins at the western most boundary continuing east to State Street. The distance shall be measured in a straight line from the right-of-way boundary to the property line of the alcohol or tobacco specialty store.

~~1,000 feet from any community location such as public or private kindergarten, elementary, middle, junior high, or high school; licensed child care facility or preschool, trade or technical school, a church, public library, public playground, public park, youth center or other space used primarily for youth oriented activities, a public recreational facility, or a public arcade); within; 600 feet of any other alcohol or tobacco specialty store and from an agricultural or residential use or residential zoning boundary, beginning at the property line of such use; within 150 feet for the 9000 South Street gateway, as it begins at the western most boundary continuing east to State Street, the distance shall be measured from the right of way boundary. Distance requirements from structures for this use shall be measured in a straight line, without regard to intervening structures or zoning districts, from the property line of the community location, or other alcohol or tobacco specialty store. Distance requirements from zoning districts for this use shall be measured in a straight line, without regard to intervening structures or zoning districts, from the zoning boundary of a residential or agricultural district to the structure of the alcohol or tobacco specialty store.~~