

PROPOSED REVISED LAND DEVELOPMENT CODE TEXT

23-0138

Vaping Retail Shops

Amended on: 04/07/2023 8:59 AM

PART 6.11.00 - SPECIAL AND CONDITIONAL USES

Sec. 6.11.136 Vaping Retailers/Smoke Shops Locational Standards

A. Intent.

Florida law provides for a comprehensive state licensing and regulatory framework for the sale of nicotine and tobacco products, including vaping devices. The purpose of this section is to establish land development regulations for the permitting requirements and locational restrictions for vaping/smoke establishments consistent with Florida law.

B. Applicability.

The provisions of this section shall be applicable in the unincorporated areas of Hillsborough County. All vaping retail shops within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school are subject to the regulations of this Section except as otherwise provided herein. Existing establishments in operation and legally established by the effective date of these regulations, [Month Day, 2023] that are not in conformance with the requirements of Subsection D. may be deemed a Legal Nonconforming Use. This determination shall be made through submittal of a Determination of Nonconformity application by the property owner of the site of the vaping retail shop.

C. Zoning districts were allowed as Conditional Use.

a) Vaping retail shops within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school shall be a permissible Conditional Use in the CN, CG, CI, M zoning districts and Planned Developments districts which permits uses allowed in the zoning districts above; subject to the requirements of this Section and approval of a Conditional Use zoning permit in accordance with Part 10.01.00 of this Code. The Conditional Use permit shall identify the maximum percentage of total monthly retail sales that may be derived from the sale of vaping products.

b) Vaping retail shops within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school shall be a permissible Conditional Use in the BPO, UC-1 and UC-2 zoning districts subject to the requirements of this Section, the accessory retail requirements in Section 6.11.03 and approval of a Conditional Use zoning permit in accordance with Part 10.01.00 of this Code.

c) An application fee shall not be required for a conditional use application for a vaping retail shop in operation and legally established by the effective date of these regulations, [Month Day, 2023].

D. Locational Requirements.

Vaping retail shops with sales of more than 20% of its total monthly sales dedicated to vaping products shall be prohibited within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school. This requirement shall not be varied or waived.

The required separation shall be measured from the property line of the parcel where the vaping retail shop is located to the property line of the parcel where the school is location, along the shortest straight-line distance between the property lines, without regard to the route of normal travel.

The applicant shall furnish a certified survey from a Florida registered engineer or surveyor, performed within 30 days prior to application submittal, indicating the distance between the proposed establishment and any existing public or private elementary school, middle school, or secondary school within the applicable radius. In case of dispute, the measurement scaled by the Administrator shall govern.

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E. Sales Record Requirements

The owner or operator of a vaping retail shop within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school shall maintain records verifying the total monthly retail sales for the previous six months and the percentage the of total sales for each month that represent sales of vaping products. Within 14 days of a request by Hillsborough County, the owner or operator shall provide the summary sale report to verify the establishment's sales for the period of time requested. Failure to provide the sale report when requested, or failure of the owner or operator to adequately demonstrate the establishment has sold less than the required percentage of vaping devices/products in biannual basis, shall constitute be a violation of this Code.

G. Establishment of New Schools Within 500 feet of Permitted Establishment

Withing ninety (90) days of the opening of a public or private elementary school, middle school, or secondary school within 500 feet of an existing Vaping Retail Shop, as measured in accordance with Paragraph D above, the operator of the establishment shall submit an application for Conditional Use or Legal Nonconforming Use pursuant to Part 11.03.00 of this Code. An application fee shall not be required for a conditional use application for a vaping retail shop in operation and legally established as of the date of opening of such school.

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PART 11.03.00 - NONCONFORMITIES

Sec. 11.03.01. - Generally

A. Intent

1. Within the zoning districts established by the Land Development Code, or amendments that may be later adopted, there may exist lots, structures, uses of land, water and structures, and characteristics of land which were lawful before this Code was adopted or amended, but which would be prohibited, regulated, or restricted under the terms of this Code or future amendments. It is the intent of these provisions to permit these nonconformities to continue until they are voluntarily removed or otherwise brought into compliance with this Code, but not to encourage their survival unless specifically authorized by these regulations. It is also the intent of these regulations to set forth a certification process for lots and detached single family residences created prior to July 26, 1989. It is further the intent of the Land Development Code that the nonconformities shall not be enlarged upon, expanded, intensified or extended, nor be used as grounds for adding other structures or uses otherwise prohibited by the Code, except as provided herein.
2. Nonconforming uses are declared to be incompatible with permitted uses in the districts involved. Such nonconforming uses shall not be intensified, enlarged or expanded unless specifically authorized herein.

B. Rights to Run With Land

All rights and obligations associated with nonconformities as defined herein shall run with the land and are not personal to the present ownership or tenant of the land, and are not affected by a change in ownership or tenancy.

C. Vested and Previously Approved Projects

The provisions of this Code and any future amendments thereto shall not be deemed to require a change in the plans, construction or designated use of structures and/or land for valid, effective and lawful permits issued prior to the effective date of this Code provided:

1. The development authorized by the permit has commenced prior to the effective date of this Code, or any future amendment thereto, as applicable or will commence after the effective date of this Code but prior to the permit's expiration or termination; and,
2. The development continues without interruption in good faith until development is complete. In the event a lawfully issued permit expires, any further development shall conform to this Code, or any future amendments thereto, as applicable.

D. Certain Lots and Uses Not To Be Considered Nonconforming

Any development that was authorized and permitted as a By Right Use, Conditional Use, Limited Use Specified Use or Special Use under previous Hillsborough County Land Development Regulations, and is not presently a prohibited use of the zoning district in which it is located under Section 2.02.02 of this Code as amended, shall be deemed a conforming use. This determination shall be made through a nonconforming use review requested by the property owner. Any enlargement, replacement or modification of such use shall be in accordance with the requirements of this Code as if the use were new.

1. For zoning purposes, a lot which meets zoning dimensional area requirements but is made nonconforming by the November 18, 1999 LDC adoption of the Minimum Lot Sizes by Available Utilities regulation (Section 6.01.06) shall be considered a conforming lot.

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2. Notwithstanding the above, golf courses and clubhouses, as defined by this Code, that were a permitted use of their property's standard zoning classification and in operation on the effective date of May 25, 2022, and were lawfully established prior to that date, shall be deemed a conforming use without need for a nonconforming use review. Additionally, enlargement, replacement or modification of the golf course or clubhouse shall be allowed without need for rezoning to Planned Development, provided no additional land area is involved.
3. Notwithstanding the above, vaping retail shops as defined by this Code that were a permitted use of their property's standard zoning classification and in lawful operation by [Month Day, 2023] shall be deemed a legal nonconforming use. This determination shall be made through submittal of a Determination of Nonconformity application by the property owner or operator of the vaping retail shop. The determination shall identify the maximum percentage of total monthly retail sales that may be derived from the sale of vaping products and, irrespective of the Section 11.03.06.J of this Code, the permitted sales percentage shall not be eligible for increase by the Board of County Commissioners.

E. Basis for Decision

The determination of the Administrator shall be based on clear, substantial and convincing evidence regarding the nature, extent and date of establishment of the nonconformity. Such evidence may include but is not limited to deeds, property assessor records, permits, plan approvals, utility bills, aerial photographs, tax bills, vested rights determinations and other similar evidence. In the absence of such evidence, the Administrator may at his discretion rely upon affidavits from a property owner, adjoining property owners and other competent parties as the basis of determination.

F. Interim Agricultural Uses

Notwithstanding the provisions of this Part, interim passive agricultural uses, as defined by this Code, shall be allowed prior to the development, site construction plan approval and/or final subdivision plat approval of parcels, or portions thereof, in standard zoning districts that prohibit agricultural uses, provided:

1. The parcel was agriculturally zoned at the time of rezoning to its present district, or was part of a Planned Development where interim passive agricultural uses were permitted by condition of approval or under the provisions of Section 5.03.07.1.d of this Code; and,
2. The agricultural activity will not impede development of other properties in a preliminary unified development plan or preliminary plat to which the parcel is part.

The absence of agricultural activities on the parcel when it was agriculturally zoned or, if such activities were present on the parcel at that time, subsequent cessation of the agricultural use after rezoning to another district, shall have no bearing on the applicability of this provision.

Additionally, upon qualification for interim passive agricultural uses under this provision, the allowance for such uses shall run with the land irrespective of any subsequent zoning changes, including rezoning to a Planned Development district, unless expressly prohibited by condition or restriction imposed by the zoning change, and provided that passive agricultural uses were permitted on the property under its zoning, or through this provision, on November 1, 2012.

(Ord. No. 01-30, § 2, 11-15-01; Ord. No. 09-62, Item O, 10-26-09, eff. 2-1-2010; Ord. No. 10-26, § 2, Exh. A(10-0770), eff. 2-11-11; Ord. No. 12-24, § 2(Exh. A)(Item IV.C)(12-0681), 10-25-12, eff. 11-1-12; Ord. No. 16-21, (Exh. A)(Item I-02)(16-1070), 10-11-16, eff. 10-18-16; Ord. No. 22-12, § 2(Exh. A), 5-19-22, eff. 5-25-22)

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Article XII

Part 12.01.00 – Definitions


Vapor-Generating Electronic Device: Any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a vapor product containing nicotine or any other substance, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of a solution or other substance intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product. This term shall be inclusive of the term "nicotine dispensing device" as used in F.S. § 569.31(3), as it may be amended. This term specifically does not apply to any vapor producing device manufactured and intended for use as a medical device for the treatment of pulmonary or respiratory conditions or ailments.

Vaping Product: A vapor-generating electronic device or any product used, or intended to be used, in a vapor-generating electronic device capable of producing vapor or aerosol containing nicotine or any other substance. This term shall also include components, parts, and accessories for a vapor-generating electronic device. This term shall be inclusive of the term "nicotine product" as used in F.S. § 569.31(4), as it may be amended.

Vaping Retail Shop: Any retail establishment which conducts sales of vaping products. This term shall exclude medical marijuana dispensing facilities as defined in Section 6.11.127 of the Land Development Code.

Establish or Establishment (only applicable to Section 2.02.06): shall mean and include any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
- (3) The addition of any sexually oriented business to any other existing sexually oriented business.

LDC 23-0138	Division Director Sign-off	
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