



## Meeting Minutes Planning and Zoning Commission

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Tuesday, August 8, 2023

5:00 PM

Council Chamber

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*4:30 - 5:00 PM - Work Session for Agenda Review*

The work session was called to order by Chairman Mercer at 4:28 p.m.

Community Development Director Pat Baugh provided a PowerPoint presentation to introduce PZ 23-002 to amend section 5.1.1 the zoning district use table 5.1 to authorize and regulate "smoke/vape shop" occupancies by specific use permit. A smoke or vape shop is defined as a retail or wholesale business that sells or offers for sale, for any kind of consideration, tobacco, tobacco products, electronic smoking devices or paraphernalia and has ten (10%) or more of its square feet in the establishment used for the sale or display of tobacco, tobacco products, electronic smoking devices or paraphernalia.

After a new smoke shop opened on Hillcrest, concerns arose about more of these businesses appearing in the community due to the availability of lower lease costs in the older, unimproved retail zoning districts. The City Council requested that the Zoning and Development Advisory Committee (ZADAC) review the operation of smoke, vape and tobacco shops within the City to determine what, if any, controls or regulations should be adopted to regulate these occupancies.

The Zoning and Development Advisory Committee (ZADAC) reviewed the topic at their January 2023 meeting. During this meeting, City Attorney Rob Dillard provided information on what other municipalities are doing in regards to regulating these businesses. Because shops of this kind are heavily regulated by the State's health and safety code, the main push for municipalities is to cover details that are not covered by the State law. Our current Zoning Ordinance does not require any particular, divisional zoning to label these shops and they are recognized the same as any retail shop. The majority of Snider Plaza and the Miracle Mile are within Planned Development Districts which are considered general retail, meaning any retail use is permitted. Any new regulation that is passed would be prospective rather than retroactive. Any shops of this type that are currently in business would not be affected by the newly implemented regulations and would be allowed to continue operating as they have been.

Currently there are three (3) shops open in University Park that focus on the sale of smoke, vape or tobacco products. Mr. Baugh displayed an aerial map indicating where these shops are located and the distance in feet they are from the closest school; the 360 Smoke Shop on Lovers Lane is located eight hundred sixty-six (866) feet from Highland Park High School, the

Tobacco Gallery on Hillcrest is located twelve hundred eighty (1,280) feet from University Park Elementary and the Dragon Vape Shop on Hillcrest is located eighteen hundred sixty-six (1,866) feet from University Park Elementary. Example images were shown of what these stores often look like on the inside in terms of merchandise.

During the Zoning and Development Advisory Committee (ZADAC) meeting, the Members did feel that a recommendation for additional regulations should be imposed and that a Certificate of Occupancy ought to be required through a Specific Use Permit (SUP) process. Discussed limitations included distance parameters from schools, parks and playgrounds, stipulations on the type of lights and signs used to promote the business and prohibiting the use of cartoon characters or other items that appeal to children in their advertising or on their merchandise.

Staff asked City Attorney Rob Dillard to create a draft ordinance for amending the Zoning Ordinance to grant a Specific Use Permit (SUP) for a smoke shop conditioned on the following:

- 1) An application for a Specific Use Permit (SUP) must be submitted to the Director of Community Development or his designee, including the required filing fee and a site plan drawn to scale showing the location, size and use;
- 2) Compliance with all applicable requirements of Chapter 161 of the Texas Health & Safety Code as amended, or any other applicable state law of City code or ordinance, provided that any word or term used but not defined in this section shall be defined as stated in Chapter 161;
- 3) That the location is at least \_\_\_\_\_ feet from any public or private school, public library, church, public park or any other smoke shop;
- 4) That sales to any person under eighteen (18) years of age are prohibited; Comply with the City sign ordinance, provided no signage advertising tobacco, tobacco products, electronic smoking devices, or paraphernalia visible outside the premises shall be permitted;
- 5) Written approval from the property owner authorizing the use.

In conclusion, Mr. Baugh also reported that he had spoken with the Police Department to determine how many, if any, calls or complaints had been received regarding these type of businesses. The Police Department reported that in three (3) years they have only received three (3) calls regarding the smoke, vape and tobacco shops in University Park. Two (2) of these calls were in regards to products being sold to underage children, and the other was in regards to a patron who was asked to leave the store.

Commissioners questioned how strict the City can be in regards to distance guidelines, and if the distance parameter also applies to churches. Mr. Dillard advised that the City can add or make the regulations as strict as they want to, but, would be required to defend their reasoning if challenged. He also added that because University Park has few retail districts but many schools,

parks and playgrounds, that the distance regulation will not have to be that big to limit an abundance of these type of stores.

Commissioners also had questions about the sale of CBD oils and products along with edible items that are often advertised for on the radio. Mr. Baugh stated that at this time, the only stores this amendment change is referring to is smoke, vape and tobacco shops and it does not pertain to CBD shops. To his understanding, CBD products and items advertised as edibles are regulated by the amount of THC they contain, which in Texas, is a very low percentage as marijuana is still illegal here.

Commissioners also discussed the restrictions on advertising. Mr. Baugh responded that this is covered under the City's sign ordinance which is fairly restrictive.

The work session was closed at 5:00 p.m. No action was taken.

#### *Call to Order*

The meeting was called to order by Chairman Blair Mercer at 5:03 p.m.

#### *Introduction of Commission Members*

**Present:** (5) Chairman Blair Mercer, Commissioner James Bristow, Commissioner Rusty Goff, Commissioner Doug Roach and Commissioner John Walsh

**Excused:** (1) Commissioner Doug Hanna

**Seated:** (4) Commissioner David DeLorenzo, Commissioner Duncan Fulton and Commissioner Stephen Hudson

#### *Staff in Attendance*

Pat Baugh, Community Development Director  
Amber Lively, Community Development Technician  
Rob Dillard, City Attorney

*The Planning and Zoning Commission of the City of University Park will conduct a public hearing in the Council (Overflow) Conference Room. Consideration will be given to the following item(s):*

#### **PZ 23-002**

The City of University Park is requesting to amend section 5.1.1 the zoning district use table 5.1 to authorize and regulate "smoke/vape shop" occupancies by specific use permit.

Community Development Director Pat Baugh gave a brief recap of item PZ 23-002 before the Commission today.

Chairman Mercer asked the Commission if there were any questions regarding the request. Being that there were none, Chairman Mercer acknowledged the public hearing and requested that anyone wishing to speak

on the matter to please come forward.

No one appeared to speak in favor or in opposition to the item and the public hearing was closed.

Commissioners discussed the request, the draft ordinance language for the requirement of a Specific Use Permit and the distance guidelines that should be required between the shops and any public or private school, public library, church, public park or any other smoke shop. Commissioners agreed that a distance of one thousand (1,000) feet seemed to be a reasonable requirement.

**A motion was made by Commissioner Walsh that the request, amended to include the one thousand feet distance requirement, be recommended for approval. His motion was seconded by Commissioner Goff and was carried by a unanimous vote.**

*Consider the previous meeting minutes with or without corrections:*

**23-127**

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**A motion was made by Commissioner Walsh, seconded by Commissioner Bristow that the minutes from May 30, 2023 be approved. The motion was carried by unanimous vote.**

ADJOURNMENT: With there being no further business before the Commission, Chairman Mercer adjourned the meeting at 5:10 p.m.

Approved by:

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Chairman Blair Mercer

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Date