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HONORABLE CITY COUNCIL

RE: Response to City Council Member Benson's memo of February 16, 2022 concerning the regulation of hookah and vape lounges and retail facilities (DEPARTMENTAL REPORT)

Upon receiving numerous complaints from residents and inquiries from members of the substance abuse prevention community, the Hon. Scott Benson requested that CPC staff begin the process of preparing a Zoning Ordinance text amendment that specifically identifies hookah and vape shops/lounges as a use. Additionally, it has been requested that this use be studied for inclusion in the B3 district, or a more intense district, as a conditional use.

Code Background

While the 2019 Detroit City Code contains several sections related to hookah pipes, the Code is currently silent on regulating hookah and vape shop/lounge locations as a standalone use term. In cases where a zoning ordinance is silent on a use term, meaning the use is not specifically listed as permitted by-right, conditional, or accessory within zoning districts, there are typically limited options available for zoning administrators to consider how to regulate unspecified uses:

1. The zoning ordinance may broadly prohibit uses that are not specifically addressed;
2. Uses that are not specifically addressed could be permitted under existing broad use categories, such as retail or entertainment; or
3. Use determinations could be required on a case-by-case or citywide policy basis to consider if unspecified uses are similar to other existing permitted use terms, and therefore permitted.

We defer to BSEED if there are questions as to how any existing hookah and vape shops/lounges have previously been permitted. Regardless of the above options and how this use has previously been considered, it is always prudent to ensure that the Zoning Ordinance accurately reflects land use and development patterns that are occurring. As such, CPC staff fully agrees with the Hon. Scott Benson in that hookah and vape shops/lounges should either be specifically addressed as a new use term, or existing Zoning Ordinance language should be modified to account for this use.

Census North American Industry Classification System

Unfortunately, CPC staff could not locate any national or state resources on planning best practices for regulating hookah and vape shops/lounges that we could consider or model. This may be due to the relatively small-scale or newness of this use. However, the U.S. Census Bureau provides a North American Industry Classification System (NAICS) that is a valuable standardized resource for considering uses and how they may relate to zoning. The NAICS classifies hookah and vape shops/lounges as two separate uses as follows:

2022 NAICS	
713990	All Other Amusement and Recreation Industries
link	This industry comprises establishments (except amusement parks and arcades; gambling industries; golf courses and country clubs; skiing facilities; marinas; fitness and recreational sports centers; and bowling centers) primarily engaged in providing recreational and amusement services.
	Corresponding Index Entries
	Hookah lounges (except primarily selling food and beverages)
459991	Tobacco, Electronic Cigarette, and Other Smoking Supplies Retailers
link	This U.S. industry comprises establishments primarily engaged in retailing cigarettes, electronic cigarettes, cigars, tobacco, pipes, and other smokers' supplies.
	Corresponding Index Entries
	Vape shops

Existing ZO terms related to NAICS

Currently, the ZO does not specifically address smoking-related uses such as hookah lounges or vape shops. Given the specificity in the way the ZO treats many other uses, we believe it may be appropriate to amend the ZO to specifically address the use of hookah lounges given the concerns. Additionally, the retail sale of non-marijuana smoking-related items could be improved to distinguish between the sale of smoking-related items and other retail products.

CPC Staff Recommended ZO Amendment Outline

Our initial proposal is to add “smoke shop/smoking lounge” as a Conditional retail, service, and commercial use in the B3 through M4, PCA, SD1, SD2, and SD4 districts. To address concerns with this use, it is important that smoke shops/smoking lounges are clearly distinguished and listed separately from general retail and other Specific Land Uses currently permitted to ensure that smoke shops/smoking lounges are not administered as a general retail use, which are permitted more broadly than intended here. Within Article XVI, two definitions should be added to account for the differences between shops and lounges:

Definitions

1. Smoke shop meaning the retail sale of smoking products for off-site consumption; and
2. Smoking lounge meaning the on-site consumption of hookah, cigars, vape, and other non-marijuana smoking products.

Use Categories

Within Article XII Use Regulation Tables, two Specific Land Use terms should be added:

1. Smoke shop: Retail sales and service, sales-oriented
2. Smoking lounge: Retail sales and service, service-oriented

Providing separate definitions and specific land use terms for shops and lounges would accommodate smoke shops that may not desire to have a lounge component, and also smoking lounges that may not desire to have a retail sales component. However, by listing these two uses together within the desired districts, both uses would be available to operators that may choose to have both a shop and lounge component. This would follow how it appears that many establishments choose to operate, primarily as a smoke shop that may have a small lounge area for on-site consumption. Conditional use standards would also need to be developed specific to this use, which could include required setbacks from sensitive uses or other establishments.

Smoking Lounge Ordinance and Licensing

In our research and discussions with the State of Michigan, we have been made aware of concerns that the City of Detroit does not currently require a business license for smoking lounges, which is something that several Metro Detroit communities that have had problems with hookah lounges are requiring. Therefore, in addition to ZO amendment information to be provided to the Planning Commission and Council, CPC staff will also be providing information on a potential smoking lounge ordinance and licensing requirement that would supplement any ZO amendment.

Staff will conclude its research on this matter in the next two weeks and begin the amendatory process working with other City agencies as appropriate.

Respectfully submitted,

A handwritten signature in blue ink that reads "Marcell R. Todd, Jr." in a cursive style.

Marcell R. Todd, Jr., Director
Eric Fazzini, City Planner