

Review by P&Z Commission: 11/28/18
Sponsor: Councilwoman Forbes
First Reading: 01/06/20
Ord. No.: 003-20

AN ORDINANCE AMENDING APPENDIX A (“ZONING”) OF THE TOWN CODE OF THE TOWN OF SMYRNA TO CLARIFY THE ZONING DISTRICTS WHERE BODY ART ESTABLISHMENTS ARE PERMITTED AND TO REQUIRE PERSONAL SERVICE ESTABLISHMENTS, ADULT ENTERTAINMENT ESTABLISHMENTS, BODY ART ESTABLISHMENTS, AND THEIR EMPLOYEES TO PROVIDE THE TOWN WITH PROOF OF LICENSING IN ORDER TO OBTAIN A CERTIFICATE OF ZONING COMPLIANCE

WHEREAS, the Town Council of the Town of Smyrna has enacted zoning regulations in the Town of Smyrna as authorized pursuant to 22 *Del. C.* Chapter 3 and Section 4.2.37 of the Town Charter;

WHEREAS, adult entertainment establishments, body art establishments, and some personal service establishments, such as massage parlors and spas, and their employees are regulated by the State of Delaware or other government or regulatory bodies, and the Town Council believes it to be in the best interest of the Town to require such establishments to provide the town with any required licenses or permits prior to obtaining a certificate of zoning compliance;

WHEREAS, an inconsistency exists in the Zoning Code regarding the zoning districts in which body art establishments are permitted;

WHEREAS, the Planning Commission considered this ordinance at a duly noticed meeting held on November 28, 2018, and recommended to the Town Council that this ordinance be adopted;

WHEREAS, the Town Council held a public hearing on January 6, 2020, notice for which was published in the Smyrna Clayton Sun Times on December 18, 2019 and posted at Town Hall on December 16, 2019, at which time all interested members of the public were given an opportunity to comment on this ordinance; and

WHEREAS, after considering the recommendation of the Planning Commission and the comments made at the public hearing, in the opinion of the Town Council, in order to further the public health, safety, and welfare, it is necessary to clarify the zoning districts in which body art establishments are permitted and to require adult entertainment establishments, body art establishments, personal service establishments, and their employees to provide the town with proof of any required license or permit in order to obtain a certificate of zoning compliance.

NOW THEREFORE, BE IT HEREBY ENACTED by the Town Council of the Town of Smyrna, a majority thereof concurring in Council duly met, that Appendix A (Zoning) of the Town Code of the Town of Smyrna be and hereby is amended as follows:

Section 1. Amend Section 5 (District Regulations), Subsection 8 (Local Commercial District LC), by making insertions as shown by underlining and deletions as shown by strike through as follows:

8. *Local commercial district LC.* This district is intended to provide areas in which the daily shopping and business needs of nearby residents can be met. This district contains retail and service uses which serve the needs of the neighborhood population.

a. *[Uses permitted.]* The following uses are permitted by right:

(1) Convenience stores and shops such as grocery stores and drugstores.

(2) ~~Personal service shops dealing directly with customers; beauty parlor, barbershop, clothes cleaning agency, laundromat, and similar establishments.~~ Personal services. A certificate of zoning compliance shall not be issued for a personal service establishment until the town has received a copy of all licenses and permits required by the State of Delaware or any other government or regulatory body or agency for the establishment and/or the establishment's employees. After giving 15 days' written notice, a certificate of zoning compliance may be revoked due to the failure of the establishment or any of its employees to have a valid license or permit, and it shall not be reinstated until a valid license or permit has been provided to the town. If a personal service establishment or employee disputes the need to obtain a permit or license, the personal service establishment or employee may request a hearing before the Town Council. If a hearing is requested, any existing certificate of zoning compliance shall not be revoked prior to the hearing but no new certificate of zoning compliance shall be issued prior to the hearing. If a permit or license is not provided to the Town, the Town may require a letter of no objection from the entity responsible for issuing the permit or license prior to the town issuing a certificate of zoning compliance.

Section 2. Amend Section 5 (District Regulations), Subsection 8 (Local Commercial District LC), by making insertions as shown by underlining and deletions as shown by strike through as follows:

f. *[Uses permitted as special exception.]* The following uses are permitted only if approved by the board of adjustment as a special exception:

(1) Institutions of a religious nature.

(2) Body Art Establishments, as defined at section 5.10.b.(2) of this Zoning Code.

Section 3. Amend Section 5 (District Regulations), Subsection 9 (Central Commercial District CC), by making insertions as shown by underlining and deletions as shown by strike through as follows:

9. *Central commercial district CC.* This district is the centralized, historic core of the Town and is intended to provide for establishments offering a mix of retail, office, and residential uses which are consistent with the existing scale and character of the surrounding historic district, in order to promote the economic viability of the community and surrounding area.

a. *Permitted uses.* The following uses are permitted:

* * *

(10) Personal services (except those personal service establishments which are located within 250 feet of another personal service establishment shall require a conditional use approval). The operation of a personal service establishment and the issuance of a certificate of zoning compliance for the same shall be in accordance with the requirements for personal services as outlined in the Local Commercial District (LC).

Section 4. Amend Section 5 (District Regulations), Subsection 9 (Central Commercial District CC), by making insertions as shown by underlining and deletions as shown by strike through as follows:

- (14) *Uses permitted as a special exception.* The following uses are permitted only if approved as a special exception pursuant to section 9(2) of this ordinance:
- (a) One-family, semidetached, townhouse, and apartment dwellings as permitted in residential district R-3; lot height and yard requirements shall be the same as in the R-3 district.
 - (b) Dwelling units which are part of a building used commercially; however, 30 percent of the existing structure must be of a commercial rather than a residential nature. The commercial portion must be a useable portion of the first floor of the building that fronts the public right of way.
 - (c) Private clubs and lodges.
 - (d) Light manufacturing and/or processing provided that:
 - (i) At least 30 percent of the building shall be used for the sale of goods produced or processed on the premises; the portion of the first floor of the building that fronts the street shall be used entirely for retail purposes.
 - (ii) Such area devoted to the production or processing of goods shall be fully concealed from any street.
 - (iii) All aspects of the production or processing of goods are completely confined within the building, including storage of all materials and finished products.
 - (iv) Not more than four employees are engaged in such production or processing.
 - (e) Funeral homes, including associated display and sales of monuments, when screened from public view.
 - (f) Institutions of a religious nature.
 - (g) Body Art Establishments, as defined at section 5.10.b.(2) of this Zoning Code.

Section 5. Amend Section 5 (District Regulations), Subsection 10 (Highway commercial district HC), Subsection b (Uses permitted as a special exception), by making insertions as shown by underlining and deletions as shown by strike through as follows:

- (2) If approved as a special exception by the Board of Adjustment pursuant to Section 9(2) of this Ordinance, Adult Entertainment Establishments, as defined by 24 Del. C. Chapter 16, and Body Art Establishments as defined by ~~the State of Delaware "Regulations Governing Body Art Establishments," adopted by the Secretary, Delaware Health and Social Services, 16 Del. Admin. C. § 4451 (Body Art Establishments), as the same may be amended from time to time and any other existing or future corresponding provision of law, adopted under authority of 16 Del. C. Chapter 1, §122 (3)(w), effective September 30, 2002,~~ shall be permitted in the Highway Commercial District (HC), only, subject to additional time, place and manner restrictions set forth at Section 9(2) of this Ordinance.

Section 6. Amend Section 5 (District Regulations), Subsection 17 (Shopping Center SC), Subsection B (Permitted Uses), by making insertions as shown by underlining and deletions as shown by strike through as follows:

B. [*Permitted uses.*] The following uses are permitted: No building or premises shall be used and no building or part of a building shall be erected which is arranged, intended or designed to be used, in whole or in part, for any purpose except the following and in accordance with performance standards of section 6 and subject to the site development plan approval as set forth in section 7.5 of the Smyrna zoning ordinance:

- (1) Bowling alleys.
- (2) Theaters and cinemas.
- (3) Convenience stores and shops such as grocery stores and drugstores.
- (4) Liquors stores for sale of liquor to be consumed off site.
- (5) Jewelry stores.
- (6) Department and variety stores.
- (7) Business, professional and government offices; banks; restaurants with sale of liquor only associated with meals.
- (8) Personal service shops such as barbershops, beauty parlors, tailors, laundry and dry cleaning. Personal services. The operation of a personal service establishment and the issuance of a certificate of zoning compliance for the same shall be in accordance with the requirements for personal services as outlined in the Local Commercial District (LC).

Section 7. Amend Section 9 (The board of adjustment; powers and duties), Subsection 2.b.ii.3 by making insertions as shown by underlining and deletions as shown by strike through as follows:

3. Adult entertainment establishments ~~and body art establishments~~ shall only be permitted in the highway commercial district (HC), ~~only.~~ and body art establishments shall only be permitted in the local commercial district (LC), central commercial district (CC), highway commercial district (HC), north corridor district (NC), and south corridor district (SCZ).

Section 8. Amend Section 9 (The board of adjustment; powers and duties), Subsection 2.b.ii.2 by making insertions as shown by underlining and deletions as shown by strike through as follows:

2. All body art establishments shall strictly comply with all provisions of ~~the State of Delaware "Regulations Governing Body Art Establishments", adopted by the Secretary, Delaware Health and Social Services~~ 16 Del. Admin. C. § 4451 (Body Art Establishments), as the same may be amended from time to time and any other future corresponding provision of law, adopted under authority of 16 Del. C. Chapter 1, §122(3)(w), effective September 30, 2002, as now in effect or as hereafter amended. Failure to comply with this requirement shall void the special exception permit.

Section 9. Amend Section 9 (The board of adjustment; powers and duties), Subsection 2.b.ii by making insertions as shown by underlining and deletions as shown by strike through as follows:

9. A certificate of zoning compliance shall not be issued for an adult entertainment establishment or a body art establishment until the town has received a copy of all licenses and permits required by the State of Delaware or any other government or regulatory body or agency for the establishment and/or the establishment's employees. After giving 15 days' written notice, a certificate of zoning compliance may be revoked due to the failure of the establishment or any of its employees to have a valid license or permit, and it shall not be reinstated until a valid license or permit has been provided to the town. If an adult entertainment establishment or a body art establishment or employee thereof disputes the need to obtain a permit or license, the adult entertainment establishment or a body art establishment or employee may request a hearing before the Town Council. If a hearing is requested, any existing certificate of zoning compliance shall not be revoked prior to the hearing but no new certificate of zoning compliance shall be issued prior to the hearing. If a permit or license is not provided to the Town, the Town may require a letter of no objection from the entity responsible for issuing the permit or license prior to issuing a certificate of zoning compliance.

9. 10. If any section, paragraph, sentence or clause of this amendment is determined or declared to be invalid or unenforceable by any court of competent jurisdiction, the remainder hereof shall remain in full force and effect.

Section 10. Severability. The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that Town Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with Town Council's intent.

Section 11. Effective Date. This Ordinance shall become effective immediately upon its adoption by the Town Council.

SYNOPSIS

This ordinance amends the Zoning Code of the Town of Smyrna to require personal service establishments, adult entertainment establishments, body art establishments, and their employees to provide the town with proof of any required license or permit prior to being issued a certificate of zoning compliance. A certificate of zoning compliance may be revoked, subject to 15 days' written notice, for failing to have an active license or permit and shall not be reinstated until an active license or permit has been provided to the town. The town may require the establishment or employee to provide a letter of no objection from a regulatory entity if the establishment or employee believes it is not required to obtain a license or permit from the regulatory entity. This ordinance clarifies that body art establishments are permitted in the local commercial district (LC), central commercial district (CC), highway commercial district (HC), north corridor district (NC), and south corridor district (SCZ).

This will certify that this is a true and correct copy of the Ordinance duly adopted by the Town Council of the Town of Smyrna at its regular Council meeting on _____, 2020.

ATTEST:

Council Secretary

Mayor

This shall certify that the title and synopsis of this Ordinance was published in the “Smyrna/Clayton Sun Times” on _____, 2020 and posted at the Town Hall on _____, 2020.

So Certifies:

Town Clerk