

Memorandum



DATE: April 8, 2016

TO: Honorable Members of the Public Safety Committee:
Adam Medrano (Chair), B. Adam McGough (Vice Chair), Sandy Greyson, Tiffinni A. Young,
Jennifer S. Gates, Philip T. Kingston

SUBJECT: **Tobacco & Paraphernalia Shops**

On Monday, April 11, 2016, you will be briefed on the Tobacco & Paraphernalia Shops by Director David Cossum of the Sustainable Development & Construction Department, Deputy Chief Vernon Hale of the Dallas Police Department, and Executive Assistant City Attorney Tammy Palomino of the City Attorney's Office.

The briefing materials are attached for your review.

Please contact me if you have any questions or need additional information.



Eric D. Campbell
Assistant City Manager

[Attachment]

cc: Honorable Mayor and Members of the City Council
A.C. Gonzalez, City Manager
Warren M.S. Ernst, City Attorney
Craig D. Kinton, City Auditor
Rosa A. Rios, City Secretary
Daniel F. Solis, Administrative Judge
Ryan S. Evans, First Assistant City Manager

Jill A. Jordan, P.E., Assistant City Manager
Mark McDaniel, Assistant City Manager
Joey Zapata, Assistant City Manager
Jeanne Chipperfield, Chief Financial Officer
Sana Syed, Public Information Officer
Elsa Cantu, Assistant to the City Manager – Mayor & Council

Tobacco & Paraphernalia Shops

Public Safety Committee
April 11, 2016



Background

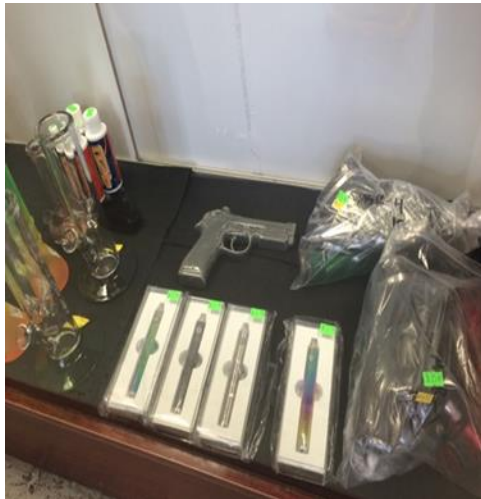
- The general merchandise or food store use in Chapter 51A captures many retail uses, including those that sell tobacco products and paraphernalia (pipes and other accessories).
- Currently Chapter 51A does not have either a
 - Smoke shop use or
 - A paraphernalia shop use
- Chapter 12B requires Convenience Stores to register
- Chapter 31-32.1 prohibits illegal smoking products and related paraphernalia.

Issues

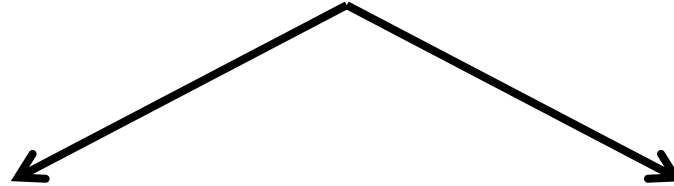
- Problems identified with general merchandise or food store uses that sell tobacco and paraphernalia products include:
 - Illegal activities such as gambling, K2/drug sales, trespassing, and prostitution.
 - Lack of registration or compliance with Chapter 12B, "Convenience Store."



Images



2-Prong Approach



Add tobacco products to the convenience store goods definition in Chapter 12B



Create a Paraphernalia Shop Use in Chapter 51A



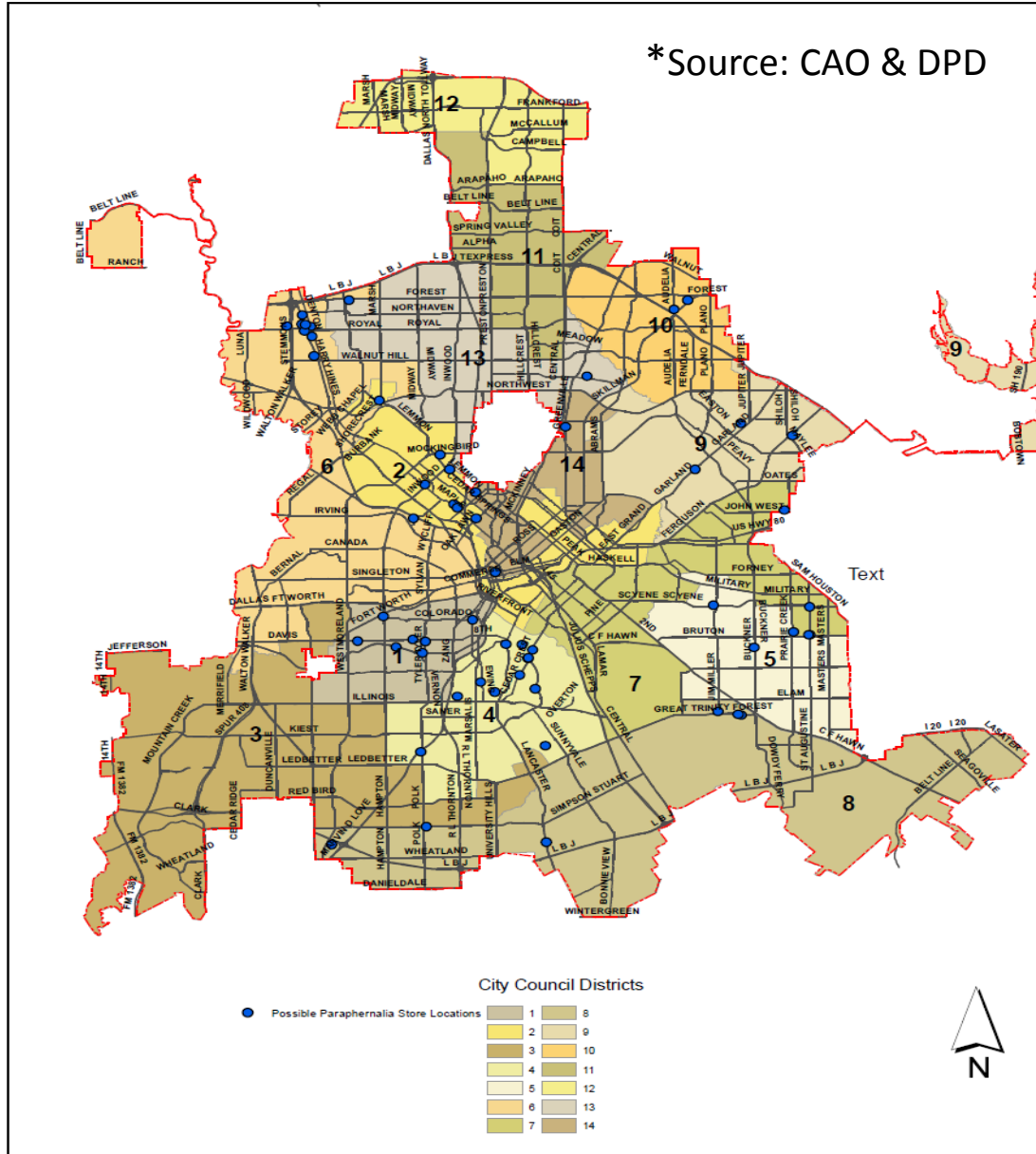
Drug Paraphernalia Shops

What Other Cities in Texas Do

City	Defines Use	Distance Requirements	Requires SUP type approval
Abilene	✓	✓	
Desoto	✓		✓
Garland	✓		✓
San Antonio	✓	✓	Sometimes
Richardson	✓		✓

Possible Paraphernalia Store Locations

*Source: CAO & DPD



Option

1st Prong

- Add tobacco products to the convenience goods definition in Dallas City Code Chapter 12B – Convenience Store Registration.
- Require general merchandise or food stores under 10,000 square feet that sell tobacco products to also register as a convenience store.
 - Benefits:
 - Requires criminal trespass affidavits, surveillance cameras, alarm system, drop safe, visibility through front windows, and employee safety training.
 - Existing locations would have register within 90 days.
 - Know their locations.
- Amend other provisions in Chapter 12B to improve the current program.



Option

2nd Prong

- Create a paraphernalia shop land use.
 - Define the use;
 - Prohibit it as an accessory use;
 - Establish distance requirements from other uses and/or districts;
 - Establish distance requirements between shops; and
 - Decide what district allowed by right? By SUP?
- Consider a registration program for these uses similar to the Chapter 12B Convenience Store Registration or incorporate into 12B.



Next Steps

Amend Chapter 12B Convenience Store Registration

- Dallas Police Department
- City Attorney's Office

To:

- Public Safety Committee
- City Council

Amend Development Code to create paraphernalia shop use

- Department of Sustainable Development & Construction
- City Attorney's Office

To:

- Zoning Ordinance Committee
- City Plan Commission
- Quality of Life & Environment Committee
- City Council

Appendix

Dallas City Code

Chapter 12B Convenience Store

ARTICLE I.

GENERAL PROVISIONS.

SEC. 12B-1. PURPOSE OF CHAPTER.

The purpose of this chapter is to protect the health, safety, and welfare of the citizens of the city of Dallas by reducing the occurrence of crime, preventing the escalation of crime, and increasing the successful prosecution of crime that occurs in convenience stores in the city. To this end, this chapter establishes a registration program for convenience stores and provides requirements relating to surveillance camera systems, video recording and storage systems, alarm systems, drop safes, security signs, height markers, store visibility, safety training programs, and trespass affidavits. (Ord. 27293, eff. 10-15-08)

Dallas City Code

Chapter 12B Convenience Store

SEC. 12B-2. DEFINITIONS

In this chapter:

- (3) CONVENIENCE GOODS means basic food, household, and pharmaceutical items.
- (4) CONVENIENCE STORE means any business that is primarily engaged in the retail sale of convenience goods, or both convenience goods and gasoline, and has less than 10,000 square feet of retail floor space. The term does not include any business that has no retail floor space accessible to the public.
- (7) HEIGHT MARKER means a measuring strip that may be attached on or near a door frame of a convenience store to aid in identifying the height of a person suspected of committing a crime.

Dallas City Code

Chapter 12B Convenience Store

SEC. 12B-13. PROPERTY INSPECTIONS.

An applicant or registrant shall permit, at reasonable times upon request, representatives of the police department to inspect the interior and exterior of the convenience store, including but not limited to surveillance camera systems, for the purpose of ensuring compliance with this chapter and other city ordinances and state and federal laws applicable to convenience stores. The applicant or registrant commits an offense if, either personally or through an agent or employee, the applicant or registrant refuses to permit a lawful inspection of the convenience store as required by this section. (Ord. 27293, eff. 10-15-08)

Dallas City Code

Chapter 12B Convenience Store

Article III. Miscellaneous Requirements for Convenience Stores

SEC. 12B-14. Surveillance Camera System; Video Recording And Storage.

SEC. 12B-15. Alarm System.

SEC. 12B-16. Drop Safes.

SEC. 12B-17. Security Signs; Height Markers.

SEC. 12B-18. Store Visibility.

SEC. 12B-19. Employee Safety Training; Telephone Access.

SEC. 12B-20. Trespass Affidavits.

Dallas City Code Chapter 41 - Smoking

GENERAL PROVISIONS.

SEC. 41-1. DEFINITIONS.

In this chapter:

(4) CIGAR BAR means a bar that derives 15 percent or more of its gross revenue on a quarterly (three-month) basis from the sale or rental of tobacco, tobacco products, smoking implements, or smoking accessories for on-premises consumption.

(16) TOBACCO SHOP means a retail or service establishment that derives 90 percent or more of its gross revenue on a quarterly (three-month) basis from the sale of tobacco, tobacco products, or smoking implements.

Dallas City Code Chapter 41 - Smoking

ARTICLE II. SMOKING PROHIBITIONS.

SEC. 41-2. SMOKING PROHIBITED IN CERTAIN AREAS.

- (d) It is a defense to prosecution under Subsection (a)(1),(a)(3), or (b) of this section if the person was smoking in a location that was:
- (3) a cigar bar that:
 - (A) was lawfully operating as a cigar bar on December 10, 2008 (except that this defense does not apply if the cigar bar is expanded, is relocated, or changes majority ownership after December 10, 2008);
 - (B) does not open into any other indoor or enclosed area in which smoking is prohibited under this section;
 - (C) is not generally accessible by a minor; and

Dallas City Code Chapter 41 - Smoking

(D) keeps all windows and doors closed at all times except as reasonably necessary for the expeditious entering and exiting of the cigar bar;

(4) a tobacco shop that:

(A) does not open into any other indoor or enclosed area in which smoking is prohibited under this section; and

(B) keeps all windows and doors closed at all times except as reasonably necessary for the expeditious entering and exiting of the tobacco shop;

IDENTIFYING GENERAL MERCHANDISE STORE UNDER 10,000 SQUARE FEET SELLING TOBACCO

- A Texas Retailer Cigarette, Cigar, and/or Tobacco Products Tax Permit is required for each place of business that sells tobacco products.
- Currently 1,433 stores are licensed in Dallas to sell tobacco and tobacco products.
- Permits are valid for two years and expire on May 31 of each even-numbered year.

How Other Texas Cities Define and Regulate Drug Paraphernalia Shops

CITY	USE	DEFINITION	DISTRICT ALLOWED	OTHER REQUIREMENTS
Abilene	Head Shop	Any retail establishment open to the public that presents, displays, or offers for sale paraphernalia items, equipment, or products commonly used, intended to be used, or commonly known to be used, for the ingestion, inhalation, preparation, or injection of illegal substances...	<ul style="list-style-type: none"> • Heavy Commercial • Light Industrial • Heavy Industrial 	<ul style="list-style-type: none"> • Must be 600 feet from a college university district • Must be 600 feet from a residentially zoned property, church, park or hospital • Must be 2,500 feet from a school • Must be 1,000 feet from another Head Shop
Desoto	Smoking Paraphernalia Establishment	A retail store where more than 15% of the gross square footage of the establishment is dedicated to the sale, distribution, delivery, furnishing of smoking paraphernalia, devices, or instruments that are designed or manufactured for the smoking, ingestion, inhaling or otherwise introduction into the body of tobacco, products prepared from tobacco, or controlled substances....	<ul style="list-style-type: none"> • Permitted by SUP in C1 and C2 districts • May be approved in PDs 	None

How Other Texas Cities Define and Regulate Drug Paraphernalia Shops

CITY	USE	DEFINITION	DISTRICT ALLOWED	OTHER REQUIREMENTS
Garland	Smoke Shop	A commercial establishment to which the public is admitted or invited which: (i) as its principal business purpose, offers for sale, distribution or exchange, for any form of consideration, any items, instruments, devices, equipment, accessories, or products that are intended, designed or marketed for use in the smoking or inhaling of any substance, including but not limited to tobacco, salts, incense, marijuana, hashish, hashish oil, cocaine or other controlled substances as defined in the Texas Health and Safety Code; and (ii) holds itself out, taking into account its business operations, its general inventory, and its commercial promotions whether on or off-premise, as encouraging or promoting the use of cannabis, illegal or controlled substances, or on which controlled substances are sold, marketed, or displayed even if marked as being sold for “novelty” or not for human consumption purposes. This definition does not include, and categorically excludes, commercial establishments that derive more than 75% of their revenue from the sale of the following tobacco products contained in the original manufacturer package: cigarettes, cigars, pipe tobacco, snuff, or chewing tobacco.	<ul style="list-style-type: none"> Permitted only upon approval of a Specific Use Provision (SUP) in the IN-Industrial district 	<ul style="list-style-type: none"> None

How Other Texas Cities Define and Regulate Drug Paraphernalia Shops

CITY	USE	DEFINITION	DISTRICT ALLOWED	OTHER REQUIREMENTS
Richardson	Controlled Substance Paraphernalia Shop	Controlled substance paraphernalia shop means an establishment for the sale of any instrument, device, article, or contrivance used, designed for use, or intended for use in ingesting, smoking, administering or preparing marijuana, hashish, hashish oil, cocaine or any other controlled substance. For purposes of this appendix, "paraphernalia" shall be defined by the laws of the State of Texas.	<ul style="list-style-type: none"> Permitted by SUP in the C-M Commercial district 	Subject to the laws of the State of Texas
San Antonio	Head Shop	A retail establishment having a substantial or significant portion of its stock in trade in or which has as its main purpose the offering for sale of paraphernalia or items designated or marketed for use with illegal cannabis or drugs	<ul style="list-style-type: none"> Permitted by right in the ERZD (Edwards Recharge Zone district) Permitted by SUP in the C-3 Commercial district 	<ul style="list-style-type: none"> May not be within 1,000 feet of a residentially zoned property; church; hospital; community center; museum; park; or school

Dallas Regulations

- Dallas City Code Section 31-32.1 prohibits illegal smoking products and related paraphernalia if they are used or intended to be used in ingesting, inhaling, or otherwise introducing into the human body an illegal smoking product.
 - Illegal Smoking Products
 - any substance, however labeled and regardless of whether the substance is marketed for the purpose of being smoked
 - Paraphernalia
 - means any equipment, device, or utensil that is used or intended to be used in ingesting, inhaling, or otherwise introducing into the human body an illegal smoking product, including but is not limited to:
 - Metal, wood, acrylic, glass, stone, plastic, or ceramic pipes, etc.
 - Water pipes
 - a carburetion tube or device;
 - a smoking or carburetion mask;
 - a carburetor pipe;
 - an electric pipe;
 - an air-driven pipe;
 - a chillum;
 - a bong; or
 - an ice pipe or chiller
 - a chamber pipe;