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**CITY OF MYRTLE BEACH  
COUNTY OF Horry  
STATE OF SOUTH CAROLINA**

**AN ORDINANCE TO INVOKE THE PENDING ORDINANCE DOCTRINE SO THAT NO PERMIT SHALL BE ISSUED THAT WOULD BE IN CONFLICT WITH THE PROPOSED ZONING CHANGES AS SET FORTH HEREIN AND TO AMEND THE ZONING MAP AND ZONING CODE AS IT IMPACTS USES SO AS TO REGULATE THE DEFINED USES HEREIN, TO ORDER THE PLANNING COMMISSION TO STUDY APPROPRIATE CONDITIONAL USES FOR THESE USES, AND MAKE RECOMMENDATIONS PERTAINING THERETO.**

Whereas, in the City Council’s judgment, negative public safety impacts have resulted from the proliferation of the defined uses herein, certain oversized or concentrated land uses that have a disproportionate negative impact on the public economy, police services, and business diversity, thereby posing a danger and threat to the public health, safety and welfare through their negative impact, and that certain current zoning allowances as to concentrations are incompatible with long range economic health and quality of police protection of the area as family oriented destination; and

Whereas, effective August 8, 2016, the United States Food and Drug Administration (FDA) mandates that electronic cigarette products be regulated as tobacco products, and has banned the sale of such products to minors. The FDA has classified e-cigarettes as drug delivery devices and subject to regulation under the Food, Drug and Cosmetic Act before importation and sale in the United States; and

Whereas, by this first reading, the City Council has resolved to consider the following text change to rezone, overlay or otherwise regulate these uses, and does hereby advertise and provide notice to the public that public hearings on the subject of the proposed map and text changes shall be held by the Planning Commission of Myrtle Beach on March 19, 2019 at 2:00 p.m. on Tuesday, in the conference on the first floor of City Hall, 937 Broadway, Myrtle Beach, South Carolina, and may be continued at the discretion of the Planning Commission so that business and neighborhood contact and input may be insured, and that reports or recommendations from the Planning Commission be delivered to City Council no later than January 1, 2020.

**NOW, THEREFORE, IT IS HEREBY ORDAINED THE CITY COUNCIL OF MYRTLE BEACH DECLARES INVOCATION OF THE PENDING ORDINANCE DOCTRINE IN LIGHT OF THESE DECLARATIONS, AND DOES HEREBY DIRECT THAT NO BUSINESS LICENSE PERMIT, CONSTRUCTION PERMIT OR OTHER PERMIT OF THE CITY BE ISSUED IN FURTHERANCE OF ANY USE OR PROPOSED USE WHICH COULD BE IN CONFLICT WITH THE DIRECTIONS OF COUNCIL OR THE PROPOSED ZONING ORDINANCES CONTAINED HEREIN; PROVIDED, HOWEVER THIS DOES NOT PROHIBIT THE SALE, LEASE OR LEGAL TRANSFER OF ASSETS OF AN EXISTING BUISNESS TO AN OHTERWISE QUALIFIED**

1 APPLICANT; AND ADMINISTRATIVE DIRECTIVES BE ISSUED TO ENSURE THAT  
2 APPLICANTS FOR LICENSES DECLARE THAT SUCH DEFINED USES ARE NOT PART OF  
3 THEIR BUSINESS PLAN.  
4

5 IT IS HEREBY ORDAINED THAT THE ZONING MAP AND TEXT OF THE CITY OF MYRTLE  
6 BEACH ARE TO BE AMENDED AS FOLLOWS IN THE APPROPRIATE SECTIONS AND IN  
7 THE FOLLOWING PARTICULARS:  
8

9 DEFINED USES TO BE REGULATED.

10 Definitions:

11  
12 **ALTERNATIVE NICOTINE PRODUCT.** A product or device not consisting of or  
13 containing tobacco that provides for the ingestion into the body of nicotine, whether  
14 by chewing, smoking, absorbing, dissolving, inhaling, snorting, sniffing, or by any other  
15 means.  
16

17 **ALTERNATIVE NICOTINE PRODUCT** does not include cigarette, smokeless tobacco,  
18 other tobacco products, or any other product approved by the United States Food and  
19 Drug Administration as a non-tobacco product for sale as a tobacco cessation product,  
20 as a tobacco dependence product, or for other medical purposes, which is being  
21 marketed and sold solely for that approved purpose.  
22

23 **BUSINESS OPERATOR.** Any person who owns, leases, operates or manages or is  
24 employed by a business establishment.  
25

26 **CANNABIS PRODUCT.** A product originating from the species *Cannabis Sativa L.*,  
27 excluding marijuana as defined by South Carolina law in 44-53-110 (27(a)), and shall  
28 include all forms of Cannabis or low-THC Cannabis products (CBD) to be consumed or  
29 applied.  
30

31 **CANNABIS DISPENSING BUSINESS.** A business offering for sale CBD, Cannabis or  
32 Derivative Cannabis Products.  
33

34 **CBD.** Cannabidiol, a chemical compound from the species *Cannabis Sativa L.*, of the  
35 family Cannabaceae.  
36

37 **E-CIGARETTE.** Any electronically actuated device or inhaler meant to simulate  
38 cigarette smoking that uses a heating element to vaporize a liquid solution, popularly  
39 referred to as "juice," and that causes the user to exhale any smoke, vapor, or  
40 substance other than that produced by unenhanced human exhalation. The juice used  
41 in e-cigarettes typically contains nicotine, and for this reason e-cigarettes and their  
42 juice can be classified as both tobacco products and tobacco paraphernalia.  
43

44 **HEAD SHOP<sup>1</sup>.** Any business that engages in the retail merchandising of tobacco  
45 paraphernalia coupled with the retail offering of synthetic marijuana, cannabis

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<sup>1</sup> Definitions. As proposed regulation regarding synthetic substances, the following term shall have the meaning indicated in this section: Methylone, mephedrone, methylnmethcathinone, fluoromethcathinone or methylenedioxypropylvaleron (MDPV), collectively "bath salts" shall mean any material, compound, mixture, or preparation, whether produced directly or indirectly from a substance of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis,

1 product, cannabis dispensing business, CBD product, or vapor product of alternative  
2 consumable matter other than tobacco meant to be smoked, vaped or ingested orally  
3 in any fashion.

4 **INCIDENTAL OR ANCILLARY SALE.** *Incidental or* Ancillary sale shall mean where a  
5 grocery store, supermarket, convenience store or similar market uses no more than  
6 two percent of its gross floor area, or 200 square feet, whichever is less, for the  
7 display, sale, distribution, delivery, offering, furnishing, or marketing of conventional  
8 cigars, cigarettes or tobacco. For any grocery store, convenience market, retail kiosk  
9 or similar use consisting of 250 square feet or less, “ancillary sale” shall mean where  
10 no more than five square feet are used for the display, sale, distribution, delivery,  
11 offering, furnishing, or marketing of conventional cigars, cigarettes or tobacco. The  
12 display, sale, distribution, delivery, offering, furnishing, or marketing of e-cigarettes  
13 or any other tobacco products or tobacco paraphernalia, regardless of square footage  
14 used, is subject to the restrictions of this chapter and shall not constitute incidental or  
15 ancillary sale under any circumstances.

16 **SMOKE OR SMOKING.** The carrying, smoking, burning, inhaling, or exhaling of any  
17 kind of lighted pipe, cigar, cigarette, hookah, weed, herbs, or any other lighted  
18 tobacco product in any manner or in any form and shall also include the inhaling,  
19 exhaling, burning or carrying any alternative nicotine product or vapor product as  
20 defined in this chapter.

21  
22 **SMOKE SHOP, TOBACCO STORE.** Any premises with more than an incidental or  
23 ancillary display, sale, distribution, delivery, offering, furnishing, or marketing of  
24 alternative nicotine, alternative nicotine delivery product, vapor product, e-cigarette,  
25 single cigarette tobacco, tobacco products, or tobacco paraphernalia.

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that contains any quantity of the following substances, or that contains any of the following substances'  
analogs, salts, isomers, and salts of isomers when the existence of the analogs, salts, isomers, and salts of  
isomers is possible within the specific chemical designation: methylone, mephedrone,  
methoxymethcathinone, fluoromethcathinone or methylenedioxypropylone (MDPV). Synthetic  
marijuana shall mean and refer to all chemical compounds intended to replicate, mimic or cause a similar  
reaction to the effects of marijuana or cannabis. Such compounds are known or marketed under such names  
as THC, HU-210 Cannabicyclohexanol, JWH-018, JWH-073, K2, Spice, herbal incense, herbal smoking  
blends, and other names. Further, synthetic marijuana shall be considered an illegal.

Possession, distribution or consumption of methylone, mephedrone, methylmethcathinone,  
fluoromethcathinone or methylenedioxypropylone (MDPV), collectively "bath salts" and/or synthetic  
marijuana. Proposing that it shall be unlawful for a person to use, offer for use, purchase, offer to purchase,  
sell, offer to sell, or possess synthetic marijuana bath salts unless prescribed by a licensed physician.  
Licensed health care providers, pharmacists and medical or pharmaceutical research facilities are exempted  
from the prohibitions against using, possessing, selling or purchasing bath salts when used, purchased, sold  
or possessed for patient treatment or medical or pharmaceutical research.

In order to ensure that the information contained herein is as current as possible, research is conducted  
using both nationwide legal database software and individual state legislative websites. Headquarters  
Office: THE NATIONAL ALLIANCE FOR MODEL STATE DRUG LAWS. 215 Lincoln Ave. Suite 201,  
Santa Fe, NM 87501.

It is further proposed that the advertisement, sale, and use of synthetic marijuana is prohibited and that any  
person who violates enacted provisions be subject to criminal penalty, and that any business engaging in  
the retail offering of prohibited substances be subject to business license revocation.

1  
2 **SYNTHETIC MARIJUANA.** Synthetic marijuana shall mean and refer to all chemical  
3 compounds intended to replicate, mimic or cause a similar reaction to the effects of  
4 marijuana or cannabis. Such compounds are known or marketed under such names as  
5 THC, HU-210 Cannabicyclohexanol, JWH-018, JWH-073, K2, Spice, herbal incense,  
6 herbal smoking blends, and other names, however named..  
7

8 **TOBACCO AND TOBACCO RELATED PRODUCTS.** Items, including but not limited to  
9 cigarettes and any product containing, made, or derived from nicotine or tobacco  
10 that is intended for human consumption, whether chewed, smoked, absorbed,  
11 dissolved, inhaled, snorted, sniffed, or ingested by any other means, including by  
12 vaping, or any component, part, or accessory of a tobacco product; cigars; pipe  
13 tobacco, cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed,  
14 and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine  
15 cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and  
16 sweepings of tobacco; dipping tobaccos; and other kinds and forms of tobacco.  
17 Tobacco excludes any tobacco product that has been approved by the United States  
18 Food and Drug Administration for sale as a tobacco cessation product, as a tobacco  
19 dependence product, or for other medical purposes, and is being marketed and sold  
20 solely for such an approved purpose.  
21

22 **TOBACCO PARAPHERNALIA.** Any paraphernalia, equipment, device, or instrument that  
23 is designed or manufactured for the smoking, chewing, absorbing, dissolving, inhaling,  
24 snorting, sniffing, or ingesting by any other means into the body of tobacco, tobacco  
25 products, or other controlled substances as defined in South Carolina Code of Laws 44-  
26 53-110 (33). et seq. Items or devices classified as tobacco paraphernalia include but  
27 are not limited to the following: pipes, punctured metal bowls, bongs, water bongs,  
28 electric pipes, e-cigarettes, e-cigarette juice, buzz bombs, vaporizers, hookahs, and  
29 devices for holding burning material. Lighters and matches shall be excluded from the  
30 definition of tobacco paraphernalia. It further includes items designed or  
31 manufactured and which may be used in ingesting, inhaling, or otherwise introducing  
32 marijuana, cocaine, hashish, hashish oil, PCP, methamphetamine, or amphetamines,  
33 tobacco or tobacco related products into the human body, such as—

- 34 (1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or  
35 without screens, permanent screens, hashish heads, or punctured metal  
36 bowls;
- 37 (2) water pipes;
- 38 (3) carburetion tubes and devices;
- 39 (4) smoking and carburetion masks;
- 40 (5) roach clips: meaning objects used to hold burning material, such as a  
41 marijuana cigarette, that has become too small or too short to be held in  
42 the hand;
- 43 (6) miniature spoons with level capacities of one-tenth cubic centimeter or  
44 less;
- 45 (7) chamber pipes;
- 46 (8) carburetor pipes;
- 47 (9) electric pipes;
- 48 (10) air-driven pipes;
- 49 (11) chillums;
- 50 (12) bongs;

- 1 (13) ice pipes or chillers;
- 2 (14) wired cigarette papers; or
- 3 (15) cocaine freebase kits.
- 4 (16) rolling papers

5

6 **VAPOR PRODUCT.** Any non-combustible product, which may or may not contain  
7 nicotine that employs a heating element, power source, electronic circuit, or other  
8 electronic chemical or mechanical means, regardless of shape or size that can be used  
9 to produce vapor from a solution or any other form. **VAPOR PRODUCT** includes any  
10 electronic cigarette, hookah, electronic cigar, electronic cigarillo, electronic pipe,  
11 hookah pipe or similar product or device, as well as any vapor cartridge or other  
12 container that is intended to be used with or in an electronic cigarette, electronic  
13 cigar, electronic cigarillo, electronic pipe, or similar product or device. **VAPOR**  
14 **PRODUCT** does not include any product regulated as a drug or device by the United  
15 States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic  
16 Act.

17

18 **ZONING AND LAND USE STANDARDS FOR SMOKE SHOPS AND TOBACCO STORES.**

19 Notwithstanding any other provision of this title to the contrary, head shops, smoke  
20 shops and tobacco stores can only be conditionally permitted use only in designated  
21 zones, subject to the regulations enacted.

22 All smoke shops and tobacco stores wishing to operate within the above zones after  
23 the effective date of the ordinance codified in this chapter must obtain a conditional  
24 use permit, to be determined in final enactment.

25 Additional zoning and land use standards for smoke shops and tobacco stores shall be  
26 as follows:

27 1. Smoke shops and tobacco stores, or businesses offering paraphernalia shall not  
28 be located within 1500 feet, measured property line to property line, from a  
29 school (public or private), family day care home, child care facility, youth  
30 center, community center, recreational facility, park, church or religious  
31 institution, hospital, or other similar uses where children regularly gather.

32 2. Smoke shops and tobacco stores or business offering paraphernalia shall not be  
33 located within 1500 feet, measured property line to property line, from another  
34 smoke shop and tobacco store.

35 3. It is unlawful for a smoke shop and tobacco store or business offering  
36 paraphernalia to knowingly allow or permit a minor, not accompanied by his or  
37 her parent or legal guardian, to enter or remain within any smoke shop and  
38 tobacco store.

39 4. Smoke shops and tobacco stores or business offering paraphernalia shall post  
40 clear signage stating that minors may not enter the premises unless accompanied  
41 by a parent or legal guardian. At least one such sign shall be placed in a  
42 conspicuous location near each public entrance to the smoke shop and tobacco  
43 store. It shall be unlawful for a smoke shop and tobacco store or business

1 offering paraphernalia to fail to display and maintain, or fail to cause to be  
2 displayed or maintained, such signage.

3 D. Standard conditions of approval for any conditional use permit shall, at minimum,  
4 include the following:

5 1. No smoking, inhaling or ingestion shall be permitted on the premises at any  
6 time.

7 2. No sales may be offered, made, solicited or conducted on the premises by  
8 minors.

9 3. No self-service tobacco, tobacco product, or tobacco paraphernalia displays  
10 shall be permitted.

11 4. No distribution of free or low-cost tobacco, tobacco products or tobacco  
12 paraphernalia or synthetic substances as would be defined, as well as coupons  
13 for said items, shall be permitted.

14 Smoke shops and tobacco stores or business that retail paraphernalia that are legally  
15 existing on the effective date of the ordinance codified in this chapter shall be  
16 amortized and cease operation in a time period not to exceed one (1) year from the  
17 date of enactment establishing new regulations.

18 Now, further therefore, in furtherance of the above stated findings and policies  
19 regarding land use and public health, safety and welfare, City Council declares that  
20 the Pending Ordinance Doctrine is invoked and the directions to staff are effective  
21 upon first reading, and the ordination of such direction shall be effective upon second  
22 reading, and may only be revoked by a legislative act of equal dignity.  
23

24 The Zoning ordinance shall become effective upon adoption.  
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28 BRENDA BETHUNE, MAYOR  
29

30 ATTEST:  
31  
32

\_\_\_\_\_  
33 JENNIFER STANFORD, CITY CLERK  
34

35 1<sup>st</sup> Reading:

36 2<sup>nd</sup> Reading: