

Agenda Item

File ID: 2020-1543

Substitute: 12/20/22

Public Hearing: YES ☒ NO ☐

Department: Planning & Sustainability

SUBJECT:

COMMISSION DISTRICT(S): All Districts

Application of the Director of Planning and Sustainability for text amendments to the Zoning Ordinance, Chapter 27, to create Section 4.2.60 (Supplemental Regulations) to address Small Box Discount Retailers, to amend Section 9.1.3 (Defined Terms) to create definition for Small Box Discount Retailers, and for other purposes; and to amend Section 4.1.3 Use Table pertaining to Small Box Discount Retailers.

PETITION NO: TA-21-1244279 (2020-1543)

PROPOSED USE: N/A

LOCATION: All Districts

PARCEL NO.: N/A

INFO. CONTACT: Brandon White, Current Planning Manager

PHONE NUMBER: (404) 371-2155

PURPOSE:

Application of the Director of Planning and Sustainability for text amendments to the Zoning Ordinance, Chapter 27, to create Section 4.2.60 (Supplemental Regulations) to address Small Box Discount Retailers, to amend Section 9.1.3 (Defined Terms) to create definition for Small Box Discount Retailers, and for other purposes; and to amend Section 4.1.3 Use Table pertaining to Small Box Discount Retailers.

RECOMMENDATION:

COMMUNITY COUNCIL: (June 2022) CC-1: No Quorum; CC-2: Approval; CC-3: Approval; CC-4: Approval; CC-5: Approval. (April 2022) CC-1: Approval; CC-2: Approval; CC-3: Approval w/ conditions; CC-4: Full Cycle Deferral; CC-5: Approval w/conditions. (February 2022) CC-1: No Action Taken; CC-2: Full Cycle Deferral; CC-3: Approval; Cycle Deferral; CC-4: Full Cycle Deferral; CC-5: Full Cycle Deferral. (October 2021) CC-1: No Quorum; CC-2: Deferral; CC-3: Deferral; CC-4: Deferral; CC-5: Deferral. (August) CC-1: No Quorum; CC-2: Deferral; CC-3: Deferral; CC-4: Deferral; CC-5: Deferral. (June 2021) CC-1: No action taken; CC-2: Deferral; CC-3: Deferral; CC-4: Deferral; CC-5: Deferral. (February 2021) CC-1: Approval; CC-2: No action taken; CC-3 Deferral; CC-4 Deferral; CC-5 Deferral. (December 2020) CC-1: Approval; CC-2: No action taken; CC-3: No action taken; CC-4: Deferral; CC-5: No action taken.

PLANNING COMMISSION: (July 12, 2022) Full Cycle Deferral. (May 3, 2022) Full Cycle Deferral. (March 1, 2022) Full Cycle Deferral. (November 4, 2021) Two-Cycle Deferral. (September 9, 2021) Two-Cycle Deferral. (July 8, 2021) Full Cycle Deferral. (March 2, 2021) Two-Cycle Deferral. (Jan. 7, 2021) Full-Cycle Deferral.

PLANNING STAFF: Approval.

STAFF ANALYSIS: See enclosed documents.

PLANNING COMMISSION VOTE: (July 12, 2022) Full Cycle Deferral 7-0-0. Jon West moved, Jana Johnson seconded for a full cycle deferral to the September 2022 zoning agenda. (May 3, 2022) Full Cycle Deferral 7-0-0. Gwendolyn McCoy moved, Edward Patton seconded for a Full Cycle Deferral to the July 2022 zoning agenda, per Staff recommendation. (March 1, 2022) Full Cycle Deferral 7-0-1. Vivian Moore moved, Jon West seconded for a full cycle deferral, per Staff recommendation to the May 2022 zoning agenda. Tess Snipes abstained; Jana Johnson was not present for this vote. (November 4, 2021) Two-Cycle Deferral 8-0-0. Jon West moved, Gwendolyn McCoy seconded for a 2-cycle deferral to the March 2022 zoning agenda. (September 9, 2021): Two-Cycle Deferral 8-0-0. Jana Johnson moved, Jon West seconded for a Two-Cycle Deferral to the January 2022 zoning cycle. Edward Patton was not present for this vote. (July 8, 2021) Full Cycle Deferral 6-0-0. Jon West moved, Edward Patton seconded for a Full Cycle Deferral, per Staff recommendation. Jana Johnson was not present for this vote. (March 2, 2021) Two-Cycle Deferral 9-0-0. J. Johnson moved, J. West seconded for a two-cycle deferral to the July 2021 zoning agenda with the condition that the small discount box store study from Georgia State University be sent to all Community Council, Planning Commission and Board of Commission members and made available to the public once it has been received. (Jan. 7, 2021) Full-Cycle Deferral 8-0-0. P. Womack, Jr. moved, J. West seconded for a full-cycle deferral to the March 2021 zoning agenda.

COMMUNITY COUNCIL VOTE/RECOMMENDATION: (June 2022) CC-1: No Quorum. CC-1 Board members in attendance recommended approval with the amendment that the separation distance be increased between small box discount retailers (SBDR) to one mile, applicable to both freestanding SBDRs as well as SBDRs in shopping centers; (CC-2) Approval 6-0-0; CC-3: Approval 7-0-0. CC-3 Board members made the following comments: 1) Clarify the definition - What is the standard for "price lower than..." and, 2) Increase distance separation to one (1) mile; CC-4: Approval 11-0-0; CC-5: Approval 9-0-0. CC-5 Board members voted for approval with the following conditions: Under "Item B3", it is recommended that high-quality surveillance equipment be used that meets or exceeds what is needed by the Dekalb County Police to clearly identify suspects to bring charges; and, 2) under "Item B4" that there be a 6-foot tall solid wooden or opaque fencing to screen the dumpster area from the public view. (April 2022) CC-1: Approval 7-0-0. The board made the following comments: 1) Define "price lower than..."; and what is the standard for this? 2) Refine the definition. 3) Extend distance separation to one (1) mile. CC-2: Approval 9-0-1; CC-3: Approval w/conditions 7-3-0. Approval w/ a condition that the separation distance between small box retailers & other uses identified in the text amendment shall be one mile. Comments included: Small box retailers provide affordable shopping opportunities for some members of the communities such as younger shoppers but tend to be detrimental to the overall image of the community, tend to be poorly organized and secured, and therefore should be located at least one mile from each other and from the land uses identified in the text amendment. However, they thought that the proposed regulations would improve the appearance and operation of small box retailers. CC-4: Full Cycle Deferral 10-0-0. Full cycle deferral to allow time to fully review the proposed amendments; CC-5: Approval w/conditions 6-0-2. Approved w/removal of NS-Neighborhood Shopping from permitted zoning districts, and prohibition of LED ribbon lights, flashing lights, neon lights. (February 2022) CC-1: No Action Taken based on Staff's recommendation for FCD. However, the following points/questions were noted: 1) Should GSU Andrew Young Policy school weigh in on this instead of the criminal justice staff; 2) Small box establishments may need to be evaluated in context with check cashing establishments and other places that are prevalent near them; 3) A distance requirement may need to be considered; 4) Regulations may need to vary depending on context specific factors; and, 5) Zoning may not be appropriate remedy for public safety issues related to small box establishments. CC-2: Full Cycle Deferral 10-0-0; CC-3: Approval 9-0-0. The Council supports regulation of small box discount retailers even if such regulation cannot address all of the issues identified in the GA State study. CC-4: Full Cycle Deferral 10-0-0 to allow sufficient time to read the consultant's report in detail so that a more informed recommendation could be made; CC-5: Full Cycle Deferral 10-0-0. (October 2021) CC-1: No Quorum; members present voted for Full Cycle Deferral 2-0-0; CC-2 Full Cycle Deferral 7-0-0; CC-3 Full Cycle Deferral 8-0-0; CC-4 Full Cycle Deferral 10-0-0; CC-5 Full Cycle Deferral 8-0-0. (August 2021) CC-1 No Quorum; Members present voted for Deferral 2-0-0; CC-2: Deferral 7-

0-0; CC-3: Deferral 8-0-0; CC-4: Deferral 11-0-0; C-5: Deferral 8-0-0. (July 2021) CC-1: No quorum, no action taken; CC-2 Deferral 9-0-1; CC-3: Deferral 11-0-0; CC-4: Deferral 12-0-0; CC-5: Deferral 8-0-0. (February 2021) CC-1: Approval 2-0-0 of proposed timetable; CC-2: No action taken; CC-3: Deferral 8-0-0 with the understanding that the moratorium will be extended and the text amendment will be placed on the May BOC agenda; CC-4: Deferral 11-0-0 to allow more community input; CC-5: Deferral 9-0-0. (December 2020) CC-1: Approval 5-0-0; CC-2: No action taken but feedback was provided to Staff; CC-3: No action taken; CC-4: Deferral 12-0-1; CC-5: No action taken but feedback was provided to Staff.

AN ORDINANCE

**AN ORDINANCE TO AMEND
THE CODE OF DEKALB COUNTY, GEORGIA,
CHAPTER 27, AND FOR OTHER PURPOSES.**

WHEREAS, the DeKalb County Board of Commissioners is authorized to adopt ordinances regulating land use for the public health, safety, and welfare;

WHEREAS, the Board of Commissioners recognizes that small box discount retail stores provide a valuable service to the residents and patrons of unincorporated DeKalb County but also exhibit negative relationships with public health, safety, and welfare;

WHEREAS, the Board of Commissioners approved a Resolution imposing a moratorium on applications related to the establishment or expansion of currently existing small box discount retail stores to study the effects of small box discount retail stores on the health, safety, and welfare of the County's residents and businesses, and to consider appropriate action to address those effects;

WHEREAS, county staff hired Dr. Dean Dabney and Dr. Leah Daigle of Analytic Trial Consultants, LLC to conduct a study of small box discount retail stores in unincorporated DeKalb County to evaluate the effects of those stores on public health, safety, and welfare;

WHEREAS, the study found that small box discount retail stores in unincorporated DeKalb County exhibit some negative correlations with public health, safety, and welfare;

WHEREAS, Dr. Dabney and Dr. Daigle presented the study's findings to the Planning, Economic Development, and Community Services ("PECS") Committee on May 3, 2022,

WHEREAS, Dr. Dabney and Dr. Daigle presented the study's findings to the Board of Commissioners during a public hearing on May 26, 2022,

WHEREAS, the Board of Commissioners held six public hearings on the proposed ordinance between May and December of 2022, and has received significant input from both members of the industry and members of the community; and

WHEREAS, the Board of Commissioners seeks to ameliorate those negative relationships with public health, safety, and welfare via the following text amendments to Chapter 27 of the Code of DeKalb County,

NOW THEREFORE, BE IT ORDAINED by the Governing Authority of DeKalb County, Georgia, and it is hereby ordained by the authority of same, that Chapter 27 of the Code of DeKalb County, as Revised 1988, is hereby amended as follows:

PART I. ENACTMENT

By amending section 27-9.1.3, by amending the use table in section 27-4.1.3, by adding section 27-4.2.60, and by adding section 27-4.2.28(I) as follows:

Sec. 9.1.3. Defined Terms.

Small-box discount retail store means a retail store characterized by the following: 16,000 square feet or less in size; offers, for sale, a variety of convenience shopping goods (e.g. household products, cleaning supplies, paper goods, plasticware, health/beauty products, party supplies, toys, prepackaged food, novelty items, seasonal goods, impulse products, etc.); continuously offers its inventory for sale at a price lower than traditional retail stores; and a limited service environment. “Small box discount retail store” does not mean a retail store that contains a pharmacy, sells gasoline or diesel fuel, or primarily sells specialty food items including meats, seafood, cheese, or oils and vinegars.

Sec. 4.1.3. - Use table.

KEY:	SA - Special administrative permit from director of planning												
	SP - Special land use permit from BoC (SLUP)												
	P - Permitted use												
	Pa - Permitted as an accessory use												
Use	OI	OIT	NS	C-1	C-2	OD	M	M-2	MU-1	MU-2	MU-3	MU-4,5	See Section 4.2
Retail warehouses/wholesales providing sales of merchandise with no outdoor storage				P	P	P	P		P	P	P	P	
Shopping center			P	P	P	P			P	P	P	P	
Small-box discount retail store			P	P	P	P			P	P	P	P	✓
Specialty store			P	P	P	P			P	P	P	P	
Sporting goods or bicycle sale			P	P	P	P			P	P	P	P	
Thrift, secondhand, antique store				P	P		P						

Sec. 4.2.60 Small-Box Discount Stores.

(A) *Purpose and Findings.* Small box discount retail stores provide a valuable service to the residents and patrons of unincorporated DeKalb County but also exhibit some negative relationships with public health, safety and welfare. The county hired Analytic Trial Consultants, LLC, to study the relationships between small box discount retail stores and the public health, safety, and welfare in unincorporated DeKalb County. That study, dated January 24, 2022, which is attached and incorporated herein by reference, found that small box discount retail stores in unincorporated DeKalb County exhibit some negative relationships with public health, safety, and welfare, especially when located in proximity to convenience stores. The Board of Commissioners seeks to ameliorate those negative relationships via the regulations contained in this ordinance.

(B) *Distance Requirement.* No small box discount retail store shall be permitted within one-half mile (i.e., 2,640 feet) of any existing small box discount retail store or

convenience store as defined in Sec. 4.2.28 of Chapter 27 of this Code. For purposes of this subsection, distance shall be measured from the nearest property line of the subject property to the nearest property line of any property on which an existing small box discount retail store or convenience store is located. This provision shall not apply to any small box discount retail store relocating within one thousand feet (1,000) of its current location.

(C) Supplemental Regulations.

- (1) The following supplemental regulations shall apply to all small box discount retail stores:
 - (a) A minimum of ten percent (10%) of the sales floor area must be dedicated to the sale of lean proteins, healthy grains, fresh or frozen meats, fruits, vegetables, and/or dairy products.
 - (b) A customer service phone number for reporting customer complaints related to business operations and upkeep shall be posted and displayed inside and outside the establishment.
 - (c) The entire premises, including the interior, exterior, parking lot, and waste management area, shall be monitored and recorded by security cameras at all times. Recorded surveillance footage shall be stored for at least thirty (30) days to facilitate investigations of criminal activity occurring on the premises.
 - i. Subsection (C)(1)(c) shall apply whether the premises is owned or leased by the operator.
 - ii. Small box discount retail stores may apply for an administrative waiver from subsection (C)(1)(c) through the procedures set forth in Sections 7.6.6 and 7.6.7 of Chapter 27 of this Code.
- (2) In addition to the supplemental regulations set forth in subsection (C)(1), the following supplemental regulations shall apply to standalone small box discount retail stores:
 - (a) Standalone small box discount retail stores must comply with all applicable code provisions, including but not limited to the design standards set forth in Article 5 of Chapter 27 of this code, except as provided herein.
 - (b) The exterior of the premises shall be adequately illuminated from sunset to sunrise. A photometric lighting plan must be provided.
 - (c) Dumpsters, waste, recyclables, and waste management equipment shall be enclosed per Section 5.4.6 of Chapter 27.
- (3) In addition to the supplemental regulations set forth in subsection (C)(1), the following supplemental regulations shall apply to small box discount retail stores located in shopping plazas or multi-tenant buildings:

- (a) No small box discount retail store shall be an anchor establishment within a shopping plaza or mixed-use building. Anchor establishment means the largest retail establishment within a shopping plaza or mixed-use building.
- (b) This provision shall not apply to a small box discount retail store that dedicates at least twenty-five percent (25%) of the sales floor area to lean proteins, healthy grains, fresh or frozen meats, fruits, vegetables, and/or dairy products.

(D) *Legal Nonconforming Use.* Any currently existing small box discount retail store operating pursuant to a valid business license and certificate of occupancy issued prior to the effective date of this Ordinance shall be a legal, nonconforming use and/or structure as defined in Article 9 of Chapter 27 of this Code, and shall be exempt from the provisions of this section.

Sec. 27-4.2.28. Fuel pumps associated with large retail, convenience stores, gas stations, service stations.

- I. No new convenience store shall be permitted within 3,960 feet (i.e., three-fourths of a mile) of any currently existing small box retail discount store.

PART II. EFFECTIVE DATE

This ordinance shall become effective upon adoption by the Board of Commissioners and approval by the Chief Executive Officer.

PART III. SEVERABILITY

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole, nor any part thereof, other than the part so declared to be invalid or unconstitutional. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are repealed.

ADOPTED by the DeKalb County Board of Commissioners, this 20th day of December, 2022.

ROBERT J. PATRICK
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this 20th day of December 2022.

MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

BARBARA SANDERS-NORWOOD, CCC
Clerk to the Board of Commissioners
And Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO FORM:

VIVIANE H. ERNSTES
County Attorney
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

ANDREW BAKER
Director of Planning and Sustainability
DeKalb County, Georgia