

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** November 20, 2024

**SUBJECT:** LDC Text Amendment (TX-2024-04), Tobacco and Hemp Retail

**PRESENTER:** Russ Burrell, County Attorney  
Autumn Radcliff, Planning Director

**ATTACHMENTS:** 1. Draft Text Amendment  
2. Certification of Public Notice  
3. Plan Consistency Resolution

### **SUMMARY OF REQUEST:**

The Board of Commissioners have previously discussed concerns with the location of tobacco and hemp retail stores near schools. It has been expressed that a reasonable separation of these types of retail and services from schools should be implemented. The proposed text amendment would add a definition for tobacco and hemp retail and require a separation from schools and separation between these retail establishments.

The Planning Board will review the proposed text amendment on November 14, 2024, during a special called meeting and make a formal recommendation to the Board of Commissioners.

### **PUBLIC NOTICE:**

A public notice for this hearing was submitted to be advertised in the Hendersonville Lightning on Wednesday, November 13<sup>th</sup>, 2024, and Wednesday, November 20<sup>th</sup>, 2024, to meet the requirements of NCGS §160D-601 (see attached certification of public notice).

### **BOARD ACTION REQUESTED:**

The Board of Commissioners must hold a public hearing before adopting any amendments to the Land Development Code. Action by the Board of Commissioners to approve the proposed text amendment is requested.

### **Suggested Motion:**

*I move that the Board of Commissioners approve the proposed text amendment TX-2024-04 with any changes as discussed and find that these changes are reasonable and consistent with the 2045 Comprehensive Plan with the approval of the resolution statement.*

**Text Amendment Summary:** The Board of Commissioners have previously discussed concerns with the location of tobacco and hemp retail stores near schools. It has been expressed that a reasonable separation of these types of retail and services from schools should be implemented. The proposed text amendment would add a definition for tobacco and hemp retail establishments and require a separation from schools and a separation between these retail establishments.

**Supplemental Requirements: to be added to all Retail Sales and Service Supplemental Requirements (SR's).**

- (A) Establishment where the principal sale and distribution are tobacco and hemp retail shall adhere to the following requirements.
- a. The site of the establishment must be located at least 1,000 feet—measured in a straight line from property line to property line—from the site of any other Tobacco and Hemp Retail establishment that exists or has been permitted.
  - b. The site of the establishment must be located at least 1,000 feet—as measured in a straight line from property line to property line— from any of the following use types: elementary, middle, or high school, regardless of public, private, or charter status.

**Definition:**

**Tobacco and Hemp Retail.** Tobacco and Hemp Retail means any establishment with the principal sale or distribution of:

- Any product that contains or is claimed in its packaging to contain tobacco or nicotine, irrespective of whether the nicotine is tobacco derived or synthetic, and is intended for human consumption, as defined by G.S. § 14-313(4). “Tobacco product” includes but is not limited to cigarettes, cigars, pipe tobacco, electronic cigarettes, hookah, smoked or vaped tobacco substitutes, chewing tobacco, snuff, snus, dissolvable tobacco products, and heated tobacco products. “Tobacco product” does not include nicotine replacement products approved by the USFDA for treatment of tobacco use and dependence.
- Any product that contains tetrahydrocannabinol (THC), irrespective of whether the THC is hemp derived or synthetic. Products that contain no greater than .3% THC and are not intended for human consumption by swallowing are exempt.
- Any product that contains or claims to contain *Mitragyna speciosa*, commonly known as kratom.
- Any electronic device that delivers nicotine, THC or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, vape, or electronic hookah.

- Tobacco and hemp retail shall also mean any establishment which primarily sells tobacco paraphernalia.

**Certification of Notice of Public Hearing**

In accordance with NCGS 160D-323 and 160D-343 the Planning Department certifies notices of the November 20, 2024, hearing regarding the proposed Henderson County Land Development Code Text Amendments (TX-2024-04)), were:

1. Submitted to the Hendersonville Lightning on November 8, 2024, to be published on November 13, 2024, and November 20, 2024, by Autumn Radcliff;

The signatures herein below indicate that such notices were made as indicated herein above:

1. Autumn Radcliff

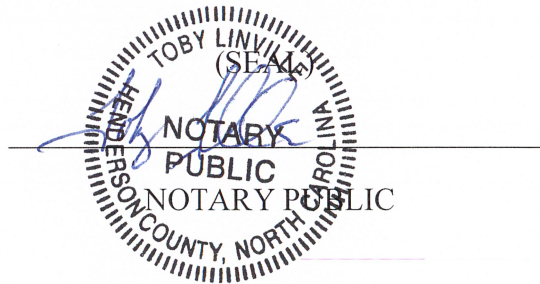
STATE OF North Carolina

COUNTY OF Henderson

I, Toby Linville, a Notary Public in and for the above County and State, do hereby certify that Autumn Radcliff personally appeared before me this day and acknowledged the due execution of the foregoing instrument. WITNESS my hand and notarial seal, this the 8<sup>th</sup> day of November 2024.

My commission expires:

6/29/26





**BOARD OF COMMISSIONER ENACTMENT 2024-\_\_\_\_\_**

**RESOLUTION OF CONSISTENCY WITH THE 2045 COMPREHENSIVE PLAN**

**Text Amendment #TX-2024-04, Tobacco and Hemp Retail**

**WHEREAS**, pursuant to N.C. General Statute §160D, Article 1, the Henderson County Board of Commissioners exercises regulations relating to development within the County's jurisdiction; and

**WHEREAS**, the Henderson County Board of Commissioners (Board) adopted the Land Development Code (LDC) on September 19, 2007, and has amended the LDC to address new and changing issues;

**WHEREAS**, on November 14, 2024, the Planning Board reviewed and provided recommendations regarding the proposed text amendment for application #TX-2024-04; and

**WHEREAS**, pursuant to N.C. General Statute §160D-601, the Planning Director provided the prescribed public notice, and the Board held the required public hearing on November 20, 2024; and

**WHEREAS**, N.C. General Statute §160D-605 requires the Board to adopt a statement of consistency with the 2045 Comprehensive Plan;

**NOW THEREFORE, BE IT RESOLVED** by the Henderson County Board of Commissioners as follows:

1. The Board determined that TX-2024-04 is reasonable, in the public interest, and is consistent with the 2045 Comprehensive Plan located therein because of the following:
  - The 2045 Comprehensive Plan intends to address substance misuse, support programs, and spread awareness.
  - The plan states that regulations should ensure zoning districts around Neighborhood Anchors and Community Centers allow, by right, compatible land uses.
  - The plan also directs the County to ensure the Land Development Code is consistent with state and federal regulations.
2. The Board determined that the proposed amendment provides for the sound administration of the Land Development Code while balancing property rights and promoting reasonable growth within the County.
3. This Resolution shall be retained in the Office of the Clerk to the Board of Commissioners.

2024-\_\_\_\_\_

THIS, the 20<sup>th</sup> day of November 2024.

**HENDERSON COUNTY BOARD OF COMMISSIONERS**

**BY:** \_\_\_\_\_  
**Rebecca McCall, Chair**

**ATTEST:**

\_\_\_\_\_  
**Denisa Lauffer, Clerk to the Board**

**[COUNTY SEAL]**